

# **Commentaries on the Immigration-Control and Refugee-Recognition Act, References and the Relevant Decisions by Courts**

## **UNOFFICIAL TRANSLATION of the 2000 Edition**

(Comprehensive commentaries prepared by a semi-official body linked to the Ministry of Justice for guidance on the interpretation of the Immigration Control and Refugee Recognition Act as amended in 1999)

### **CHAPTER I GENERAL PROVISIONS**

#### **Article 1 Purpose**

1. This Act was originally enacted as the so-called Potsdam Cabinet Order under “the Imperial Ordinance on the Cabinet Order relating to the Acceptance of the Potsdam Declaration (Imperial Ordinance no. 542 of 1945)” and was entitled “the Immigration Control Order”. The Immigration Control Order was enforced on November 1, 1951, and was later given continuous validity as an act as a result of the provision of Article 4 of “the Act relating to the Effect of the Orders in relation of the Ministry of Foreign Affairs issued under the Imperial Ordinance on the Cabinet Order relating to the Acceptance of the Potsdam Declaration (Law no. 126 of 1952)”, which was passed in the occasion of coming into force of the Peace Treaty (Treaty no. 5 of 1952) on April 28, 1952. Thereafter, on the occasion of the Japanese accession to “the Convention relating to the Status of Refugees and (Treaty no. 21 of 1951, hereinafter referred to as “The Refugee Convention”)” and “the Protocol relating to the Status of Refugees (Treaty no. 1 of 1951, hereinafter referred to as “the Protocol”)”, “the Act to amend the Immigration Control Order and other laws for the Purpose of the Arrangement to the Accession to the Convention relating to the Status of Refugees, etc. (Law no. 86 of 1951, hereinafter referred to as “Law no. 86 of 1951”)”, which was passed on June 5, 1951, made a partial amendment of the Immigration Control Order as part of the arrangement of domestic laws. Thus, as a result of the amendment by the Law no. 86 of 1951, this Act provided for refugee recognition procedures, etc., which were different in nature from traditional immigration control in Japan, and at the same time, was renamed from the Immigration Control Order to the Immigration-Control and Refugee-Recognition Act.

Subsequently, more amendments were made to the following aspects of this Act; arrangement of a status of residence, establishment of the crime of promoting illegal work in 1989, establishment of the crime of stowaways en mass in 1997, a definition of a passport in 1998, establishment of the crime of illegal residence, an extension of denial of landing, and an extension of re-entry permission in 1998.

As aforementioned, this Act was renamed from the Immigration Control Order to the Immigration-Control and Refugee-Recognition Act as a result of the amendment by the Law no. 86 of 1951. However, this amendment was a partial one and therefore the legislation number, Cabinet Order no. 319 of 1951, has been maintained. Thus, this Act is referred by other laws and

ordinances, etc., as the Immigration-Control and Refugee-Recognition Act (Law no. 319 of 1951).

2. This Article clearly shows the purposes of the Act and gives the indication in interpretation and application of the Act.

3. The primary purpose of the Act is “to provide for equitable control over the entry into or departure from Japan of all persons.”

“All persons” include both the Japanese and the aliens regardless of their nationalities, and in relation to vessels, etc., both the crew members and any others.

“The control over the entry and into or departure from Japan” include not only control over the entry into or departure of the Japanese and the aliens but also control over sojourn of the aliens.

“In order to attain “equitable control”, this Act, in standard with general international law dealing with aliens, provides for the conditions and procedures of the entry, residence, etc., of aliens and has prescribed the systems and procedures for the enforcement of executive powers, particularly on deportation.

4. The other purpose of this Act is to consolidate the procedures for the determination of refugee status.

The Refugee Convention obliges the states party to the Convention to provide various protection measures to refugees. The Convention itself is silent on the determination of refugee status, however, as a pre-requisite to apply the obligations provided by the Convention, it is indispensable to decide whether the person concerned is a refugee or not. In most Western countries, the procedures for the determination of refugee status have been set up by domestic law, while the United Nations High Commissioner for Refugees has been advising to set up a sole central organization to examine and decide refugee status.

In Japan, as a result of the Cabinet Meeting on March 13, 1981, it was agreed that there should be a unified procedure for the Government’s refugee status determination of which Minister of Justice will be in charge.

#### <References>

The Agreement of the Cabinet Meeting (Mar. 13, 1981)

In respect of the accession as well as the implementation of the Convention relating to the Status of Refugees and the Protocol relating to the Status of Refugees, the following subjects have been agreed by the Cabinet Meeting of Mar. 13, 1981:

1. In order to promote Japan’s international cooperation, the accession of the Convention relating to the Status of Refugees and the Protocol relating to the Status of Refugees (hereinafter referred to as the Convention and the Protocol) shall be requested at the upcoming ordinary session of the Diet. Following this, a bill to consolidate the related laws shall be submitted to the Diet.

Concerned Ministries and Agents shall take necessary measures to implement the Convention, the Protocol, and the new bill.

2. The government shall unify the procedures of refugee status determination as a result of the implementation of the Refugee Convention and the Protocol, and the Minister of Justice shall

administer the procedures. At the same time, concerned Ministries and Agents shall also take the required measures to facilitate the administration of refugee status determination.

3. Among the laws related to social security are laws related to national pension, etc., which are applicable only to Japanese citizens. While the current system of these laws shall be maintained, new measures shall be taken under the Convention and the Protocol which oblige the states party to give refugees social security tantamount to that given to its own citizens. Therefore, these laws shall be amended in order to abolish the requirement of Japanese nationality, but no other measures shall be taken.

4. In order for Japan to deal with the refugee issue effectively as well as appropriately, concerned Ministries and Agencies shall deal with this issue under close interdepartmental cooperation, and if necessary, shall conduct interdepartmental consultation for unified measures to be submitted to the Diet.

#### <The Relevant Decisions by the Court>

- The Immigration Control Order has been valid and given the power as an Act from the date of coming into force of the Peace Treaty by Law no. 126 of 1952, and it does not violate the provision of Article 22, Paragraph 2 of the Constitution. (Hiroshima Higher Court, December 8, 1952)

- As Supplementary Provision 1 of the Immigration Control Order (Cabinet Order no. 319 of Oct. 4, 1951) provides that the Order shall be valid on Nov. 1, 1951, it is evident that the legal validity of the Immigration Control Order came into force on the same day. On the other hand, since this Cabinet Order was provided for under the Imperial Ordinance on the Cabinet Order relating to the Acceptance of the Potsdam Declaration (Imperial Ordinance no. 542 of 1945), it comes to the fore whether the validity of the Order was maintained or abolished after the Peace Treaty was concluded. However, as a result of the provision of Article 4 of the Act relating to the Effect of the Orders in relation to the Ministry of Foreign Affairs issued under the Imperial Ordinance on the Cabinet Order relating to the Acceptance of the Potsdam Declaration, this Cabinet Order has maintained the validity of the Act even after the Peace Treaty became effective. The Immigration Control Order had been valid as Cabinet Order from Nov. 1, 1951, through Apr. 28, 1952 when the Peace Treaty came into force, and has thereafter maintained the validity of this Act as law. Therefore, it is self-explanatory that the Order has been applied as an Act since Nov. 1, 1951. (Tokyo Higher Court, January 28, 1965).

## **Article 2 Definition**

This Article defines the terminology used in this Act, and Cabinet Orders and Ministerial Ordinances stipulated under this Act.

1. Item 1 used to offer the definition of the territory of Japan, which read as “Honshu, Hokkaido, Kyushu, Shikoku, and the islands provided for in the Ministry of Justice Ordinance.”

Prior to the return of Okinawa, the Ogasawara Islands, the Ioh Islands, etc., these islands were put under US administration in accordance with the provision of Article 3 of the Peace Treaty (Treaty no. 5 of 1952) and therefore the sovereign rights of Japan over these islands were asleep,

although these islands had been inseparable part of Japanese territory. Thus, in order to appropriate control of entry and stay of the aliens, these islands should have been excluded from the application of the Act. Since these islands were not Japanese territory in terms of immigration control, control over the entry and residence of people between these islands and so-called Japan proper was considered reasonable. Therefore, this Act provides for the definition of “the territory of Japan” and excludes these islands from “the territory of Japan.” Later these islands were successively returned to Japanese administration and at the time when Okinawa was finally returned in 1972, the pertinent territory of Japan and the area over which the Japanese administration was exercised became coincident. Thus, the definition of the territory over which the Act was to be applied became unnecessary and was deleted by “the Act to amend and/or repeal the relevant laws in the occasion of the return of Okinawa (Law no. 130 of 1971).”

In this connection, the so-called northern territory, i.e., the Habomai Islands, the Shikotan Island, the Kunashiri Island and the Etorofu Island, which are pertinent territory of Japan but have been forcibly occupied by the former Soviet Union (Russia currently) since the end of the World War II. Because Japanese administration is not exercised in these areas, the application of some laws in those islands are explicitly or considered excluded, however, in this Act the northern territory is not to be interpreted to “excluded” from the territory of Japan.

The territory of Japan includes the territorial waters and air. The width of the territorial water is stipulated to be 12 miles (except for the specific water areas provided for by the schedule 2) by Article 1 of the Territorial Sea Act (Law no. 30 of 1977).

2. The alien in item 2 means a person who does not possess Japanese nationality. Those who have dual nationalities i.e., Japanese nationality plus nationality of another country are Japanese, and the stateless person is an alien. Whether a person has Japanese nationality or not is to be decided in accordance with the provisions of the Nationality Act. See also the reference at the end of the commentaries in this Article.

3. Item 3 defines a crewman as a person who is on board in order to engage in activities necessary for the operation of the vessel, etc., and that a person who simply fulfills such formalities such as the possession of a crewman certificate, the existence of an employment contract, the enlistment in the crew list and so forth does not fall into the category of a crewman under this Act.

4. Item 3-2 concerns on the definition of a refugee. Under this Act, any person considered to be a refugee under the Refugee Convention or the Protocol is a refugee.

Article 1 of the Refugee Convention defines the refugee as a person considered as a refugee under then existing treaties and agreements (such as so-called Russian or Armenian refugees) and as a person unable or unwilling to avail himself of the protection of his own home country, owing to fear of persecution on account of political opinion, etc. as a result of any event which occurred before January 1, 1951. However, this interpretation excludes those who became refugees as a result of events occurring before January 1, 1951. Thus, in 1967, the Protocol was adopted, removing the dateline mentioned above and expanding the scope of the refugees, while the Protocol applies the provisions of the Refugee Convention on the protection of the refugees.

In brief, with regard to the requirements to be a refugee under the Refugee Convention and the Protocol, there exists a well-founded fear of persecution in the country of nationality (or in the country of his former habitual residence for a person who does not have nationality) on account

of (1) race, (2) religion, (3) nationality, (4) membership of a particular social group, or (5) political opinion and the person concerned is outside of the country of his nationality because of such a fear and is unable or unwilling to avail himself of the protection of the country of nationality or in case of a stateless person unable or unwilling to return to the country of his former habitual residence. The cardinal notion in the definition briefed above is that of “fear of persecution.” Generally speaking, persecution means grave infringement on life, physical safety or individual freedom, oppression or other grave violation of human rights by the government. More concretely, persecution consists from attempt on life, undue detention, excessively severe punishment, depriving every means to make a living, and so forth. Therefore the persons to whom the protection is to be considered without any regard to persecution, for instance, those who are fleeing from warfare, natural disaster, poverty, hunger, etc., are not refugees under the Refugee Convention and the Protocol.

5.

5-1. Item 5 clarifies the meaning of “passport (in the board sense of the word)” used in this Act. In today’s world, any country requires aliens to possess and carry some travel document for the entry into and exit from the country of aliens and nationals and for the sojourn of aliens. The documents recognized as travel documents differ from country to country, however, the most typical as well as authentic document universally accepted is a “passport (in the narrow sense of the word)”(the national passport). A passport in such a narrow sense is thus considered as a document issued by the state to its nationals traveling to other countries, and also as an official document to which the issuing state officially certifies the nationality and identity of the holder and asks for the protection and convenience.

However, the international community has increasingly recognized not only the national passport in a narrow sense, which is issued by Japan or the other countries recognized by Japan, but also the travel documents issued by the competent international organization, the refugee travel certificate issued in accordance with the provision of Article 28 of the Refugee Convention by the states party to the Refugee Convention (refer to the commentary of Article 61-2-6), and other travel certificates in lieu of the national passport in the narrow sense. This Act recognizes these documents as a valid travel document (in the broad sense of the word).

Other documents treated as valid travel documents (in the narrow sense) in lieu of a national passport are as follows.

5-1-1. A travel document issued for repatriation --- this document is issued to a Japanese citizen for the purpose of repatriation, in lieu of a passport from the Minister of Foreign Affairs and the Japanese Consular Officer, etc.

5-1-2. A travel document issued for a journey to Japan --- this document is issued for the purpose of enabling aliens not possessing valid passports owing to unavoidable reasons to come to Japan. This document was originally issued to stamp the visa on it by the Japanese Consular Officer, etc. and is now considered as a certificate in lieu of a passport and at the same time as a visa under this Act.

5-1-3. A so-called alien’s passport --- the document issued by the competent authorities of foreign countries to their non-nationals, certifying the identity of the holder and enabling the return to the issuing country (place) or the entry into the third country.

5-1-4. A United Nations Travel Document (Laisse Passe) --- a travel document issued by the

United Nations to its staff members. Article 7, paragraph 24 in the Treaty relating to the Privileges and Exemptions of the United Nations (Treaty no. 12 of 1963) provides that the states party to the United Nations shall recognize Laissez Passer as a valid travel document.

5-1-5. A re-entry permit issued by the Immigration and Naturalization Services of the U.S. Department of Justice --- this is recognized as a certificate in lieu of a passport due to practical necessity.

In a case where the Minister of Justice issues re-entry permission in accordance with Article 26, paragraph 1, a re-entry permit, which is issued to an alien unable to possess a passport (in the wider sense) (Article 26, paragraph 2) such as stateless persons, shall be treated as a passport (in the wider sense) provided for in this item only if the holder re-enters Japan with the relevant re-entry permit (Article 26, paragraph 7).

5-2. Under the law (law no. 57 of May 8, 1998) that partially amended the Immigration Control and Refugee Recognition Act, item 5-(b) was added to item 5-(a). Item 5-(b) provides that, besides a passport issued by the Japanese Government, a foreign government recognized by the Japanese Government or any competent international organization, a document issued by any competent organization of the region prescribed by Cabinet Order is treated as a document equivalent to the above-mentioned documents as stipulated in item 5-(a) (effective from Jun. 8, 1998). Also, under the provision of item 5-(b) of this Act, that is, "Cabinet Order to prescribe the regions described in Article 5-b of the Immigration Control and Refugee Recognition Act" was enacted (Cabinet Order no. 178 of May 22, 1998), and became effective on the same day as the provision was enforced.

With regard to "the regions prescribed by Cabinet Order", Cabinet Order prescribes the regions where Japan accepts documents issued by any organizations of the regions as a passport under the immigration control law. It is necessary to prescribe these regions in comprehensive consideration of the following: the status of personal exchanges between Japan and the country concerned, the consequent immigration status in Japan, problems relating to deportation of the nationalities from the country concerned, and any other practical and diverse elements. Flexible judgment according to the changing circumstances is required due to the significance of this matter. At the same time, other Ministries and Agents besides the Ministry of Justice are involved in "passport" issues. Thus, Cabinet Order shall prescribe these regions.

"Any competent organization of the region" is an organization located in the region prescribed by Cabinet Order, which has authority to issue the relevant document accepted as a passport under the immigration control law.

"The documents specified in 5-(a)" mean "a passport, a Refugee Travel Document or any other certificate in lieu of the passport (including a Travel Certificate issued by a Japanese Consular Officer, etc.) issued by the Japanese Government, a foreign government recognized by the Japanese Government or any competent international organization.

"A document which is equivalent" is not a document specified in 5-(a) per se, but one that has the same function.

6. "Crewman's Pocket-ledger" defined by item 6 is a document issued to a crewman by the competent authorities of each country.

The competent authorities means the organ to issue such a document in accordance with the laws

and regulations of the country concerned. Unlike the issuing authorities of a passport, the issuing authorities are not restricted to the government recognized by the Japanese Government or Japan. For instance, even though it is a public corporation or some public entity, as far as the laws and regulations of the country concerned recognize the authorities of such an organization the organization is entitled to issue the document.

“Mariner’s Pocket-ledger” is a document including the identity of the crewman concerned, the contents of employment contract, etc. and indicates that the person is a crewman of the ship concerned. The document is intended to facilitate the administrative protection and control over the crewman, and unlike a passport, it is not equivalent to a travel document.

“Any other document equivalent thereto concerning a crewman” means the document substantially equivalent to “mariner’s pocket-ledger”, regardless to its title or formalities. Currently, Japan recognizes the following documents as such an equivalent document; a trainee certificate for a training ship issued by the Ministry of Transport to a person (only a Japanese citizen) engaged in overseas navigation training or pelagic fishery training with a ship which belongs to Japan or to a local public body, an identification card issued by the Japanese Defense Agency to a crewman on board a Self-Defense Force ship or a Self-Defense Force airplane which goes overseas, and a certificate in lieu of Mariner’s Pocket-ledger which is issued by the U.S. Coast Guard, etc.

7. There used to be definition of the concept of “transit” in item 7. However, under “the Act partially amending the Immigration Control Order (hereinafter referred to as Law no. 85 of 1981)”, the definition was deleted.

8. Item 8 provides that Ordinance of the Ministry of Justice shall specify seaports or airports for the entry into and exit from Japan so that aliens enter into and depart from Japan at the specific seaports or airports. As of January 1, 1999, 143 ports for entry and departure are designated (Article 1, Annex 1 of the Regulation under the Act).

9. “Carrier” in item 9 means a person engaging in the transportation between Japan and other countries. These people include the owner of a vessel, etc., a person who charters a vessel, a person who runs an air transporting business (an airline company), a person who operates a vessel, etc., or the agent (a ship agent, an air transporting agent).

10. Items 10 through 13 concern on the definition of the officials who function in the immigration procedures.

10-1. “Immigration Inspector” is posted to at the Immigration Detention Center and the Regional Immigration Bureau (Article 61-3, paragraph 1). He engages in examination and hearing on landing and deportation, issues the written detention order and the written deportation order, releases provisionally the person under detention and conducts inquiries into the facts necessary in determining refugee status (article 61-3, paragraph 2). Needless to say, all immigration officers may not exercise all the functions mentioned above.

10-2. “Supervising Immigration Inspector” is a senior immigration inspector and is designated by the Minister of Justice among immigration inspectors. Supervising Immigration Inspector is given the authorities to issue the written detention order or the written deportation order (Articles 13, 39, 47, 48 and 49), permit and revoke provisional release (Articles 54 and 55), and give provisional landing permission (Article 13).

10-3. “Special inquiry Officer” is an immigration inspector empowered to take the hearing which is the secondary examination in the landing examination and the deportation procedures (Articles 10 and 48-3 through to 8).

10-4. “Refugee Inquirer” is the immigration inspector empowered to inquiry into the facts relating to the determination of refugee status.

10-5. “Immigration Control Officer” is posted to at the Immigration Detention Center ant the Regional Immigration Bureau (Article 61-3-2, paragraph 1). He investigates the violations in the entry, landing and sojourn, detains and sends back those who are subject to the written detention and deportation order, and guards the Immigration Detention Center and other facilities for detention (Article 61-3-2, paragraph 2). In addition, in accordance with “the Act relating to the Enforcement of the Provision of Article 13 of the Convention on the Crimes and other certain Acts taken place in the Airplane (Law no. 112 of 1970)”, the Immigration Control Officer will receive the suspects (suspects of a serious crime) (Article 1 of the same law) handed over by the captain of the airplane pursuant to the provisions of Article 13, paragraph 1 of the above-mentioned convention, and will, if necessary, prevent such suspects from rejoining the airplane (Article 2 of the same law).

10-6. “An immigration inspector (including a special immigration inspector and a supervising immigration inspector) and an immigration control officer are independent organs who are to execute the functions stipulated in Articles 61-3 and 61-3-2 respectively.

11. “Investigation of violation” in item 14 means the investigation conducted by the immigration control officer on the violation of the immigration laws and regulations. “The investigation” of violation is, in a case where there is an alien who is suspected to fall under one of the items 1 through 7 of Article 24, to find the person, observe him to prevent him from escaping, and obtain/collect the relevant information to prove the fact of his violation.

12. “Immigration Detention Center” in item 15 is the facility established for the purpose of detaining temporarily the aliens against whom the execution of the written deportation order is expected. Currently there are three such centers, Omura Immigration Control Center, Eastern Japan Immigration Control Center, and Western Japan Immigration Control Center. In addition to the persons to be deported, a person against whom a written detention order has been issued can be detained at these centers (Article 41, paragraph 2).

13. “Detention House” in item 16 is the facility within the regional immigration bureau for the detention of the person against whom the written detention order has been issued (Article 61-6). The Act also authorizes to detain in such a facility the person against whom the written deportation order has been issued in a case where the execution of deportation is not expected immediately (Article 52, paragraph 5).

#### <The Relevant Decisions by the Court>

##### Item 2

- According to the Peace Treaty, Japan recognized the independence of Korea and had persons belonging to Korea lose Japanese nationality. Persons belonging to Korea are those who used to have legal status as Koreans under the Japanese law. Persons who used to have legal status as Koreans are those who were administered under the Korean Family Registration Order and thus



were registered in the Korean Family Registration. (Supreme Court, April 5, 1961)

- After the Peace Treaty with the Republic of China came into force, Japanese women who married Taiwanese men were eliminated from the Japanese family registration, and thus are considered to have lost their Japanese nationality. (Supreme Court, December 5, 1962)

Item 3

- “Crewman” mentioned in Article 25, paragraph 1 and Article 2, item (3) of the Immigration Control Order means a person who has concluded employment contract with the owner of the vessel, etc. and who actually engages in the services necessary for the operation of the ship. Thus, even if the person concerned possesses a valid mariner’s pocket-ledger and if the employment contract has gotten the public approval under Article 37 and 38 of the Seaman Act, he should not be considered a crewman in a case where he does not have the intention to engage in the service of the ship and to receive remuneration but uses the appearances of a crewman as a means of entry into and departure from Japan. (Supreme Court, July 16, 1968).

## **Article 2-2 Status of Residence and Term of Residence**

1. Under this Article, an alien may reside in Japan only under the status of residence determined by the permission for landing, the acquisition of status of residence or by the permission of any change thereof, unless the Immigration Control and Refugee Recognition Act and other laws provide otherwise. The categories of status of residence shall be listed in the left-hand column of Annexed Tables I and II, and an alien residing in Japan under such a status of residence may engage in the activities described in the right-hand column of Table I or in the activities of a person with the civil status or position described in the right-hand column of Table II, corresponding to each status of residence specified in these Tables. The term of residence shall be determined by the Ministry of Justice Ordinance. For instance, the term of stay for any status other than that of diplomat, official or permanent resident may not exceed 3 years.

2.

2-1. The phrase of “to reside” is used in several meanings under the immigration control law, but has the following three major meanings.

2-1-1. An alien resides in Japan under a status of residence (e.g. Article 21, paragraph 1).

2-1-2. An alien legally resides in Japan regardless of a status of residence (e.g. Article 22-2, paragraph 2, and Article 26, paragraph 1).

2-1-3. Legally or not, an alien resides in Japan (e.g. Article 2, item 14).

The meaning of “to reside” in this Article falls under 2-1-2.

2-2. “The Immigration Control and Refugee Recognition Act or other laws provide otherwise” means the following provisions which allow an alien to reside in Japan without a status of residence under the provision of paragraph 1.

2-2-1. Special provisions under the Immigration Control and Refugee Recognition Act

a) Article 13 (Permission for provisional landing)

b) Article 13-2 (A place where an alien issued a deportation order may stay)

- c) Articles 14 through 18-2 (Permission for special cases of landing)
- d) Article 22, paragraph 1 (Special cases for acquisition of status of residence)

#### 2-2-2. Special provisions under other laws

Articles 3 through 5 of special laws relating to the immigration control for those who deserted Japanese nationality under the Peace Treaty (special permanent residents).

3.

3-1. “The status of residence determined by the permission for landing” is issued under Article 9, paragraph 3, Article 10, paragraph 7, and Article 11, paragraph 5.

3-2. “The status of residence determined by the acquisition of status of residence” is issued under Article 22-2, paragraph 3 and Article 22-3.

3-3. “The status of residence determined by the permission of any change thereof” is issued under Articles 20 and 22.

4. “A status of residence” means the status of the alien concerned who may enter, reside, and engage in specific activities in Japan, and also means the type of the status of the alien concerned who engages in the activities of a person with a civil status or position which enables the person to enter and reside in Japan.

A status of residence is shown in the format of Annexed Tables and listed by the category of the activities in which an alien engages. Table I specifies an alien who may reside in Japan as a person engaging in specific activities. Table II specifies the status of an alien who may reside in Japan as a person with a specific civil status or position. Furthermore, Table I has the following 5 divisions.

- a) Table I-1: Among the aliens who may engage in activities involving the management of a business involving income or activities for which they receive remuneration is a person who is not subject to Ordinance of the Ministry of Justice (Ministerial Ordinance to Provide for Criteria pursuant to Article 7, paragraph 1, item 2 of Immigration Control and Refugee Act. Hereinafter referred to as “the Ordinance of Criteria”.) that provides for the criteria to adjust the qualification and the number of aliens, corresponding to the socio-economic situation in Japan.
- b) Table I-2: Among the aliens who may engage in activities involving the management of a business involving income or activities for which they receive remuneration is a person who is subject to the Ordinance of Criteria.
- c) Table I-3: Among the aliens who may not engage in activities involving the management of a business involving income or activities for which they receive remuneration is a person who is not subject to the Ordinance of Criteria.
- d) Table I-4: Among the aliens who may not engage in activities involving the management of a business or activities for which they receive remuneration is a person who is subject to the Ordinance of Criteria.
- e) Table I-5: An alien who engages in designated activities by the Minister of Justice.

Table II lists categories of civil status or position corresponding to each status of residence. However, it is not guaranteed that a person with such a civil status or position described in Table

II shall automatically enter and reside in Japan. In addition to paragraph 2 of this Article saying, “An alien residing under a status of residence specified in the left-hand column of Table II may engage in the activities of a person with the civil status or position described in the right-hand column corresponding to that status.”, Article 7, paragraph 1, item 2 provides as a requirement for landing that “Activities to be engaged in Japan stated in the application must fall within one of the activities of a person with the civil status or position described in the right-hand column of Annexed Table II...”. Therefore, in order that an alien may enter and reside in Japan under the status of residence specified in Table II, it is necessary for the alien concerned to engage in “the activities” of a person with a civil status or position corresponding to the status of residence concerned.

5. “The term of residence” is a term that an alien may reside in Japan with a status of residence. Article 3 of the Regulation under the Act and Table II annexed to the Article give the details.

#### <The Relevant Decisions by the Court>

- Under the immigration control law, an alien is expected to have one single status of residence with a valid term of residence. When an alien changes a status of residence, his current status of residence as well as the term of residence should be replaced with the new status of residence and the new term of residence. Thus, an alien may not possess multiple statuses of residence.

When an alien with a certain status of residence (hereinafter referred to as “an old status of residence”) is newly issued with a different status of residence (hereinafter referred to as “a new status of residence”), his new status of residence and term of residence shall become valid. While it is practically possible for an alien to return to his old status of residence from his new status of residence, there is no possibility for the alien concerned to reside in Japan after the term of residence specified in his old status of residence. (Tokyo District Court, July 29, 1996)

- The immigration control law focuses on the actual activities in which an alien intends to engage in Japan and allows the alien concerned to enter and reside in Japan by issuing a status of residence corresponding to the nature of his intended activities. From this viewpoint, an alien whose spouse is a Japanese is not an exception. For an alien, who is legally married to a Japanese citizen, to reside in Japan with the status of residence of a Japanese citizen’s spouse, etc., the fact that the alien concerned is legally married to his/her Japanese spouse is insufficient to enable him/her to reside in Japan. It is understood that the activities engaged in by the non-Japanese spouse concerned should be consistent with what is expected of a Japanese citizen’s spouse. However, Annexed Table II listing the status of residence for “a Japanese citizen’s spouse” describes his/her civil status or position in Japan only as “spouse of a Japanese national” in the left-hand column, and does not refer to the specific nature of the activities as a spouse of Japanese national. Also, there is no other provision to indicate such activities. Nevertheless, in light of the purpose of the immigration control law, a spouse of Japanese national should seek to observe the nature or the sphere of the activities required of a spouse of a Japanese national according to the common ideas of the society. The civil law no. 752 states that the core activities as a married couple are to live together, to cooperate with each other, and to help each other. There is no doubt that any other relevant activities could constitute the core activities of a married couple. On the other hand, in a case where the marital relationship breaks down to an extent beyond recovery, such that the couple has no will to maintain and continue their marriage,

and that their marriage becomes an empty shell, it is safe to say according to the common ideas of the society that there is no room to expect the activities of a spouse of a Japanese national. Thus, the alien in the above-mentioned circumstances can no longer affirm the relevance of his/her status of residence as a spouse of a Japanese national. (Tokyo Higher Court, May 30, 1996)

## **CHAPTER II ENTRY AND LANDING**

### **SECTION I ENTRY OF AN ALIEN**

#### **Article 3 Entry of an Alien**

1. A sovereign state can decide freely about which aliens and status conditions are acceptable - this is a traditional principle under international law.

2. This Act differentiates the entry into the territory of Japan into two phases, i.e., “entry” into the territorial water or air, and “landing” onto the land itself. This Article provides for the requirements for an alien to enter Japan. In paragraph 1, while the possession of a passport is mandatory for an alien with the exception of a crewman possessing a crewman’s pocket-ledger, an alien who intends to land in Japan without being issued landing permission, etc. may not enter Japan even though the alien concerned has a valid passport, etc.

“A valid passport” (or “a valid crewman’s pocket-ledger” in respect of the crewman) described above should meet the following requirements; (1) the passport should be legally issued by an organization with legitimate authorities, (2) the identity of the holder should be correctly specified, and the person specified in the passport should be the holder, and (3) if the passport specifies certain cases where the passport loses its validity, on such a occasion, the passport shall not be considered as a valid passport.

In paragraph 2, an alien who becomes a crewman in Japan shall be considered as a crewman and may enter Japan without a passport as far as the crewman possesses a valid crewman’s pocket-ledger.

3. Article 9, paragraph 1, Article, paragraph 6, or Article 11, paragraph 4 (including the case provided for in Article 12, paragraph 2) provides for “endorsement stamp for landing permission”. “Landing permission” is provided for in Section IV of Chapter III, and means permission for landing at a port of call, permission for landing in transit, landing permission for crewmen, permission for emergency landing, landing permission in the event of a disaster, or landing permission for temporary refuge.

4. The so-called right of harmless passage is very important in connection with this Article. Under the right of harmless passage, as provided in Chapter II, Section III of the United Nations Treaty relating to the Law of Sea, a ship can freely pass territorial waters of other countries except their inland seas so long as the ship does not harm peace, order, or security of these countries. As a result, in a case where a ship passing the territorial water of Japan carries an alien who does not possess a valid passport (persons violating this Article), this fact per se does not cause the ship to lose the right of harmless passage. However, if the ship engages in embarking or disembarking the people violating this Article, the passage of the ship is no longer regarded as

harmless (Article 19 of the said Treaty).

5. Those who have entered into Japan in violation of this Article may be deported as illegal entrants under Article 24, item 1 and may also be punished under Article 70, item 1.

<The Relevant Decisions by the Court>

- Article 22 of the Constitution of Japan provides for no freedom, whatsoever for an alien to enter Japan. (Supreme Court, June 19, 1957)

- An alien is not entitled to claim the right of freedom to enter into Japan, the right of residence in Japan, or the right of continuous residence in Japan under the Constitution. (Supreme Court, October 4, 1978)

- Article 3 of the Immigration Control Order does not contravene Article 22 of the Constitution. (Supreme Court, September 9, 1958)

- Article 3 of the Immigration Control Order does not contravene the Preamble or Article 14 of the Constitution. (Tokyo Higher Court, September 19, 1960)

- The provision of Article 3 of the Immigration Control Order does not contravene Article 13, paragraph 2 of the International Declaration on Human Rights or Article 22 of the Constitution. In addition, Article 14, paragraph 1 of the International Declaration on Human Rights only declared the right of the state in regard to the political offender, etc. seeking asylum from persecution and it should not be interpreted to provide for the right of an individual to be able to get asylum in a foreign state. (Fukuoka Higher Court, January 27, 1954)

- It is natural to interpret “his own country” described in Article 12, paragraph 4 of the International Covenant on Civil and Political Rights and Optional Protocol as “his country of nationality”, according to the usual meaning of the word. (Fukuoka District Court, September 29, 1989)

- A Korean in Japan who has departed from Japan as a crew member of a Japanese ship and who has joined abroad another ship or has disembarked once abroad and rejoined the same ship on the next occasion of the visit of the ship cannot be considered as the person continuously residing in Japan and therefore he should get through the normal procedures of entry and landing as an ordinary non-crew passenger.

It should not be interpreted as the established practice or the binding precedent of the administration that a Korean in Japan in possession of a Japanese crewman’s pocket-ledger departs from Japan by a Japanese ship, gets the reshipping permission by the Korean authorities and changes the ship in Korea and that on occasion of his return to Japan the above-mentioned pocket-ledger be treated as valid. (Osaka Higher Court, March 7, 1974)

- “A valid passport” in Article 3 of the Immigration Control Order means a passport issued in accordance with the legal procedures in a foreign country. (Kobe District Court, June 28, 1979)

- An alien who entered Japan illegally and has continued to reside in Japan does not possess a status of residence determined in accordance with the provision of Article 9, paragraph 3 of the Immigration Control Order. Thus, his continuous residence is illegal, and he is not entitled to immediate legal protection even though his residence has been maintained without problems for a

long term. (Supreme Court, October 23, 1979)

- Notes: In respect of criminal decisions by court, refer to the decisions by court described in Article 70.

## SECTION II LANDING OF AN ALIEN

### Article 4 (Deleted)

### Article 5 Denial of Landing

1. This Article provides the grounds for denying the landing of an alien, i.e., the negative requirements. It is an established principle of international law that each sovereign State has the power to prohibit the entry of an alien undesirable to the State concerned and to only permit the entry of aliens who comply with the relevant landing requirements of the State. Each state shall thus refuse the entry or landing of an alien who is considered to be detrimental to public health, public order, national security, or the like in the State concerned.

2. With a view to protecting our national interests and public security, paragraph 1 enumerates the grounds in items 1 through 14 whereby aliens should be prohibited from landing.

Item 1: After the Infectious Disease Prevention Law was abolished, the Law Concerning Prevention of Infections and Medical Care for Patients of Infections (Law no. 114 of 1998) was enacted. Following this, this item was amended (effective from 1 April 1999), and now refuses entry to a patient who suffers from either category 1 or 2 infections as provided for by the said Law, or from the designated infections (with respect to only those requiring hospitalization under the Cabinet Order), or to a person who shows symptoms of new infections. Given the extremely dangerous nature of these infections and taking into consideration factors such as the infectiousness and the seriousness in case of infection, a person falling under any category of the aforementioned infections shall not be permitted landing.

As medical expertise is necessary to determine whether this item applies to the person, the determination shall be made by an immigration officer only after seeking a medical doctor's opinion (Article 9, paragraph 2).

Item 2: This item prohibits the landing of a person who is mentally disabled as provided for by the Law Concerning Mental Health and Welfare for the Mentally Disabled (Law No. 123 of 1950). The Japanese administration of justice defines a mentally disabled person as a person who suffers from: schizophrenia; acute drug addiction or dependency due to the use of psychotropic substances; mental deficiency; mental disorder; or any other mental diseases (Article 5 of the said Law). Should an alien falling under any of the aforementioned categories be permitted landing, it is likely that this disability would have adverse effects on our country. The person shall be thus not permitted landing.

Item 3: This item prohibits the landing of aliens who might be a burden to the public.

The national government and/or local public government have been extending assistance to the poor persons or others unable to make a living, however, if the persons who are in need of such assistance flow into Japan in large scale, not only the financial problem but also the undesirable influence against the society are feared. Thus, this item intends to screen the persons who may

need such assistance. “A pauper, vagrant, etc.” in this item is an explanatory example of the persons who might be likely to be a burden to the public.

Item 4: Having committed a crime is one of the indications on the undesirable character to the society. This item prohibits the landing of the persons sentenced to penal servitude or imprisonment for one year or over, or to a penalty equivalent thereto. “Penalty equivalent thereto” means any kind of detention for correction, labor or else with the similar purposes to penal servitude or imprisonment. The crime concerned may be the violation of laws of Japan or any other countries. “(To be) sentenced” means that the person was sentenced in the past. Therefore, the sentence per se suffices for the application of this item, and it does not matter whether the person actually served or completed the execution of the sentence. “A person who has been sentenced” includes a person who is currently in suspension of a sentence, or one who has successfully completed the suspension of a sentence (Article 27 of the Penal Code (Law no. 45 of 1907)), or one whose sentence became invalid in accordance with regulations of the Penal Code (Article 34-2) or of the Amnesty Law (Articles 3 and 5 of Law no. 20 of 1947). With respect to an indeterminate sentence, the maximum term is required to be one year or more. If so, the sentence suffices for the application of this item. In case of accumulative crimes, if the formal adjudication amounts to two or more, each penalty of each adjudication should be examined for the application of this item. However, considering that a political offense which is recognized as anti-social in one country is not necessarily recognized as anti-social in our country, this item excludes political offenders. This provision is thus in conformity with the spirit of the Extradition Act in that a political offender shall not be extradited. What defines an offense is always arguable. However, except for so-called pure political offenses, murder, incendiarism, and the like, which constitute common offenses shall not be interpreted as political offenses even though the offenses themselves were motivated by political intentions.

Item 5: While certain drugs and the like, such as narcotics, are essential for medical treatment, the illegal use and handling of such drugs may cause medical poisoning. The users might not only undermine their mental and physical health but serious harm to the social order may also occur. Each State has thus set forth strict regulations for the use of drugs such as narcotics that deal with violations very rigidly. Our country strictly controls these drugs under the drug-related control laws and regulations. As part of the legal controls on the use of drugs, this item prohibits the landing of any alien who has been sentenced in violation of the laws and regulations relating to the control over narcotics and the like of the country of Japan as well as of foreign countries, with a view to preventing aliens spreading the use of drugs such as narcotics in the society of Japan.

Item 6: Similar in purpose to article 5, this item refuses landing to a person who illegally possesses drugs such as narcotics, and stimulants, and the like, or any tool to smoke opium.

“To possess,” means to carry, but does not necessarily mean that the person physically carries any of the aforementioned. Even though drugs and the like are kept in a cabin, or even though baggage containing drugs and the like are located at a customs office away from the holder, as far as the person is determined to be responsible for the drugs and the like, “to possess” described in this item is applicable.

Item 7: This item prohibits the landing of persons with prostitution. Prostitution violates sexual morality and corrupts public decency. Besides a prostitute, this item applies to a person who has mediated, solicited or furnished a place for prostitution, or who has engaged in business directly

related to prostitution. An example of someone who has engaged in business relating to prostitution is a person who has kept prostitutes under his/her control for the purpose of prostitution.

Item 8: This item refuses the landing of a person who illegally possesses firearms, swords, and the like which might become a direct danger to human beings. An alien in illegal possession of firearms and the like, which can be used to murder or injure human beings, might be a threat to the society of Japan. The landing shall be thus denied.

Item 9: This item refuses the landing of a person who was refused landing on account of illegal possession of drugs and the like, or firearms, swords, and the like within the past one year, or who was deported from Japan except a person subject to sub-items (k) through (n) of item (4) of Article 24 within the past 5 years. An alien falling under one of the first two categories shall be refused landing for a certain duration not only on account of the illegal possession itself, but also given the nature of the danger indicated by the past refusal of landing against such an alien. Similarly, with respect to an alien falling under the final category herein, considering that it was imperative for the Japanese authorities to enforce the deportation of an alien whose stay was undesirable to Japan, the alien shall be refused re-landing in Japan within five years after the date of deportation.

This item permanently prohibits the landing of an alien who was deported on account of sub-items (k) through (n) of Article 24, item 4. Such an alien includes a person who attempted to destroy the constitutional order of Japan by resorting to violence, and is considered extremely dangerous to the nation and/or the society of Japan. Therefore, this law provides that items 11 through 14 of paragraph 1 of this Article prohibit the landing of such a deportee, and also a person deported on account of any of these items shall be refused re-landing without waiting for the Japanese authorities to determine whether the person falls under any of the items 11 through 14 of paragraph 1 of this Article.

Item 11: This item refuses the landing of a subversive activist who attempts to destroy the fundamental political entities of the country of Japan by resorting to violence, or of a member of a subversive group resorting to violence.

This item applies to an alien who attempts or expresses intention to destroy illegally and violently the government existing through the Cabinet system under the Japanese Constitution, or who forms a political party or any other group attempting or expressing intention to attempt such an activity, or who joins such an organization.

Item 12: This item refuses the landing of a person who is a member of a subversive group advocating so-called anarchism.

Item 13: This item refuses the landing of a person who attempts to engage in certain propaganda for accomplishing the purpose of a subversive group as provided for under item 11 or 12. Even though the person does not identify with the principles of a subversive group resorting to violence and/or anarchism, this item shall apply if the person, toward the purpose of the group, attempts to issue, disseminate, or exhibit the relevant printed matters, movies, or other documents and drawings.

Item 14: Each ground for determining an alien undesirable for landing in Japan has been enumerated in items 1 through 13. In terms of legislation, however, it is not technically possible to encompass every ground for refusing the landing of an alien in Japan. Even though a person



does not fall under any of the aforementioned items, a particular case may indicate that the person might do harm to the national interests or public safety of the country of Japan. Therefore, item 14 refuses the landing of a person if the Minister of Justice finds that the person is likely to take action against the national interests or public safety of the country of Japan. “The national interests of the country of Japan” mostly amounts to diplomatic interests, but also extends to economic as well as social interests.

3. Paragraph 2 provides for a reciprocal principle that, in a case where a country imposes on Japanese nationals a more strict requirement than that under this law, an identical requirement shall be applied to the nationals of the country concerned regardless of the provision of paragraph 1.

## **CHAPTER III PROCEDURES FOR LANDING**

### **SECTION I EXAMINATION FOR LANDING**

#### **Article 6 Application for Landing**

1. Paragraph 1 provides that an alien wishing to land in Japan shall possess a valid passport with a visa. The exceptions to this provision are; (1) the alien concerned is a national of the country in which the visa exemption is available due to an international agreement or notice to that effect between the Japanese Government and the foreign government, (2) the alien concerned is given re-entry permission under the provision of Article 26, or (3) the alien concerned is given a Refugee Travel Document under the provision of Article 61-2-6.

2. Paragraph 2 provides that an alien wishing to land in Japan should undergo an examination for landing. The procedures and the contents are mentioned by the provisions of the next Article and onwards.

3. “Any alien” who applies for landing in Japan according to this Article does not include “a crewman”. Considering that a crewman stays in Japan for a very short period, and that he belongs to a vessel, etc., it is appropriate to provide for the landing of a crewman through a different mechanism. From this viewpoint, the immigration control law prescribes that landing permission for a crewman is provided for under Article 16, and that the application for landing permission be made by the master or the carrier of the vessel, etc.

4. “An international agreement” means an agreement determining the relations between states or between a state and an international organization under the international law. The agreement generally accompanies an exchange of official documents, and is called a treaty, an agreement, a protocol, an exchanged archive, agreed minutes, etc. While the agreement does not need the approval of the Diet for its validity, it shall oblige a state to observe the legal binding attached to the agreement, and thus a joint communiqué, or a resolution of the United Nations General Assembly, etc., which is not given legal binding, shall not be interpreted as an international agreement.

5. “Notice to that effect of the Japanese Government to a foreign government” has the following 2 cases.

(1) The Japanese Government or a foreign government usually gives unilateral notice of visa

exemptions. For instance, when Japan exempts the aliens of a certain country from a visa, the Japanese Government often used to notify the visa exemption of the country concerned by exchanging a verbal note. Most of the recent visa exemption notices between Japan and other countries have been through unilateral notification although some of them are based on mutual agreement. Therefore, it is evident that this case should be included in the above-mentioned notice.

(2) The Japanese Government unilaterally issues visa exemption to certain nationals.

6. “The passport of an alien for whom re-entry permission provided for in Article 26 is granted” or “the Refugee Travel Document which is issued pursuant to the provisions of Article 61-2-6” does not need a visa. Immigration control law provides for a status of residence and term of stay determined for the holder of the above-mentioned documents upon issuance, which shall be continuously valid even after the landing of the alien concerned (Article 9, paragraph 3). Under these circumstances a visa is deemed unnecessary.

### **Article 7 Immigration Inspector’s Examination**

1. This Article provides for an immigration inspector’s examination for an application of landing filed by an alien.

2. An immigration inspector’s examination should follow the provisions (conditions for landing) described in items 1 through 4 of Article 7, paragraph 1. However, the alien, who lands in Japan with re-entry permission according to Article 26, paragraph 1 or with a Refugee Travel Document according to Article 61-2-6, paragraph 1, is not subject to being examined if the alien’s status is covered by items 2 and 3, paragraph 1 of this Article, considering that his status of residence and term of residence at the time of the issuance of the re-entry permission or the Refugee Travel Document shall be valid even after his landing in Japan.

Also, under Article 7 of the Immigration Control Special Law, in a case where a special permanent resident provided for in the said law lands in Japan with re-entry permission, the resident is not subject to being examined whether not only items 2 and 3, but also 4 (conditions not applicable to denial of landing) are applicable or not.

3-1. Paragraph 1, item 2 provides that activities engaged in in Japan stated in the application must fall within one of the activities described in the right-hand column of Annexed Table I or within the activities of a person with the civil status or position described in the right-hand column of Annexed Table II. Besides the above-mentioned activities (in case of the designated activities or activities of a long term resident, only the activities designated by the Minister of Justice in the Official Gazette are applicable), no other activities meet the conditions for the landing provided for in paragraph 1, item 2 for the purpose of controlling residence of aliens.

3-2. Paragraph 2, item 2 provides that “in respect of the activities described in the right-hand column of Annexed Table I (5), the proposed activities must be activities designated by the Minister of Justice in the Official Gazette”. While the activities in this column are described as “activities which are specifically designated by the Minister of Justice for foreign individuals”, landing permission is actually issued by an immigration inspector (including a special inquiry officer and a supervising immigration inspector), and it is also necessary to designate the activities given with landing permission. Given these circumstances, the Minister of Justice shall

designate the activities concerned in the Official Gazette separately, and only the activities designated by the Minister of Justice in the Official Gazette are in conformity with paragraph 1, item 2 (the activities specified in “the designation of activities described in the right-hand column of Annexed Table I (5) under Article 7, paragraph 1, item 2 of the Immigration Control and Refugee Recognition Act” (the Official Gazette of the Ministry of Justice no. 131 of May 24, 1990)). However, in a case where the Minister of Justice grants special permission for landing (Article 12, paragraph 1), it is possible to recognize other activities which are not described in the Official Gazette and to issue a status of residence for the designated activities.

3-3. In paragraph 1, item 2, it is provided that “the civil status or position in the right-hand column under Permanent Resident shall be excluded”. This is because a status or position of a permanent resident shall not be interpreted as being qualified for the conditions for landing even if an alien applies for landing as a person with the status or position of a permanent resident.

3-4. Paragraph 1, item (2) provides that “in respect of the position specified under Long Term Resident, the proposed position must be one of the positions designated by the Minister of Justice in the Official Gazette”. While the position specified under Long Term Resident in Annexed Table II is described as “those who are authorized to reside in Japan with designation of term of stay by the Minister of Justice in consideration of special circumstances”, like the case of a status of residence for the designated activities, the permission for landing is virtually actually by an immigration inspector. Also, it is necessary to make it clear with what kind of position the alien should be to be granted residence in Japan. Given these circumstances, the Minister of Justice shall designate the positions concerned in the Official Gazette separately, and only the positions designated by the Minister of Justice in the Official Gazette shall be in conformity with paragraph 1, item 2 (the positions specified in “the matter to designate the positions specified under Long Term Resident in Annexed Table II” under Article 7, paragraph 1, item 2 of the Immigration Control and Refugee Recognition Act (the Official Gazette of the Ministry of Justice no. 132 of May 24, 1990)). However, in a case where the Minister of Justice grants special permission for landing, it is possible to decide whether to grant a status of residence for a long term resident to an alien with a position which is not described in the Official Gazette.

4-1. The provision of “the requirement provided for by the Ministry of Justice Ordinance which shall be stipulated in consideration of factors including but not limited to the effect on Japanese industry and public welfare” intends to adjust the level of aliens’ entries into Japan in consideration of the effects of the entry and residence of aliens on the Japanese economy and public welfare. This requirement is another necessary condition to determine a status of residence of an alien, in addition to the compatibility between an alien and his proposed status of residence. Since this requirement is provided to maintain the appropriate level of aliens’ entries into Japan in consideration of the effects on Japanese industry and public welfare, the requirement is subject to amendment depending on changes in the Japanese economy, society, etc. Given the nature of the requirement, unlike the eligibility conditions for a status of residence, the requirement shall be stipulated by the Ministry of Justice Ordinance, but not by law.

4-2. “Factors including but not limited to the effect on Japanese industry and public welfare” means the effects of the entry of aliens into Japan on Japanese industry, employment, working conditions, etc. and the extent of such effects, the effects on education-related matters, the effects on Japan’s diplomatic relations with other countries, the effects on security, and all other effects to be considered for determining aliens’ entries into and residence in Japan.

4-3-1. Aliens who wish to engage in the activities described in Annexed Table I (2) and (4) should be in conformity with the requirement which the Ministry of Justice Ordinance stipulates in consideration of the effects of aliens' entries into Japan on Japanese industry and public welfare. While the number of aliens who enter and reside in Japan has been increasing due to Japan's growing internationalization, the effects on Japanese industry and public welfare have become more prominent. Therefore, the requirement of such a landing examination for aliens wishing to enter Japan was stipulated to conduct appropriate immigration control based on Japanese Government policy.

4-3-2. For the purpose of conducting appropriate immigration control, the Minister of Justice considers the effects on Japanese industry and public welfare which may be caused by aliens' entries and residence in Japan somehow, and consults with the heads of the relevant administrative organizations, and prescribes requirements of landing which are consistent with the relevant administrative policies. Thus, paragraph 3 provides that the Minister of Justice shall consult with the heads of the relevant administration organizations in prescribing the requirements of landing.

5. The Law relating to the Special Cases for the Narcotics and Psychotropics Control Law (Law no. 94 of 1991. Hereinafter referred to as "the Narcotics Special Law".) intends with international cooperation to prevent any illegal activities relating to restricted drugs, and has regulations which enable so-called "controlled delivery" to be conducted beyond borders as an exceptional case of landing procedures under immigration control (Article 3 of the Narcotics Special Law). For instance, when an alien suspected to possess restricted drugs such as narcotics applies for landing permission in Japan, the Minister of Justice shall ascertain that; (1) a public prosecutor notifies or a judicial police officer requests of the Minister of Justice that the alien concerned be landed for investigation of narcotics crime, and (2) that it is ensured that a sufficient security system exists to prevent the restricted drugs from being scattered or lost and also prevents the alien concerned from escaping. An immigration inspector should be also informed of the above-mentioned situation by the Minister of Justice. After the immigration inspector conducts an investigation on necessary matters excepting Article 5, paragraph 1, item 6 of the immigration control law, he shall stamp the permission for landing in the passport of the alien concerned (Article 3, paragraph 1 of the Narcotics Special Law) or grant the alien concerned landing permission (Article 3, paragraph 2 of the said law) in order to uncover leading figures involved in the illegal dealings. However, an immigration inspector conducts an investigation not only under Article 5, paragraph 1, item 6 of the immigration control law. If the above-mentioned alien is subject to denial of landing because he has been sentenced on a drug charge or imprisoned for one year or more on a charge of committing other violations of law, the immigration inspector shall not stamp the permission for landing for controlled delivery of the alien concerned.

6. Paragraph 2 states that an alien applying for landing permission has the burden of proof to establish that he meets the landing conditions.

#### Article 7-2 Certificate of Eligibility

1. Paragraph 1 provides that, excluding those who intend to engage in the activities described in the right-hand column corresponding to Temporary Visitor, upon advance application by an alien intending to land in Japan, the Minister of Justice may issue a certificate of eligibility for a status of residence stating that the alien concerned fulfills the conditions for landing, which are in conformity with his proposed activities in Japan. This paragraph intends to simplify and to

expedite the immigration examination procedures. Paragraph 2 provides for the proxy application for a certificate of eligibility for a status of residence.

2. This Article intends to simplify and to expedite the immigration examination procedures. In brief, when an alien wishing to enter Japan applies for landing in advance, the alien concerned shall be examined under the procedure of a certificate of eligibility for a status of residence which will determine if the conditions for landing are fulfilled, that is, whether his proposed activities fall within one of the activities described in the right-hand column of Annexed Table I or of the activities of a person with the civil status or position described in the right-hand column of Annexed Table II. As a result, if the alien concerned is found to be eligible for landing, the certificate (a certificate of eligibility for a status of residence) may be issued. The alien in possession of the certificate has easier access to a visa at an overseas agency of the Ministry of Foreign Affairs. In addition, since the alien can prove his eligibility for landing readily by showing an immigration inspector the certificate upon his landing in Japan, the immigration examination procedures shall be simplified as well as expedited.

3. The procedures in paragraph 1, which are stipulated by the Minister of Justice Ordinance, are as follows.

3-1. The principle or his proxy submits an application form and other required documents (materials establishing a prima facie case) to a regional immigration control bureau (Article 6-2, paragraph 1 of the Regulation under the Act). If the principle is not in Japan, he may not make the application by mail. Therefore, only a principle who happens to reside in Japan and intends to re-enter Japan can make an application for a certificate of eligibility for a status of residence (in actuality, the majority of applications are proxy applications).

3-2. In a case where an alien makes an application and is found to fulfill the conditions set forth in Article 7, paragraph 1, item 2, the Minister of Justice shall issue a certificate of eligibility for a status of residence. On the other hand, if an alien cannot fully prove his eligibility for a status of residence and thus cannot make his eligibility definite or if the alien concerned has been found to be not in conformity with other conditions for landing, the Minister of Justice shall not issue the certificate (Article 6-2, paragraph 5 of the Regulation under the Act).

3-3. The term of validity is indicated in a certificate of eligibility for a status of residence, and the certificate should be submitted for immigration examination (Article 6 of the Regulation under the Act).

4. A certificate of eligibility for a status of residence is “a certificate stating that the alien fulfills the conditions set forth in Article 7, paragraph 1, item 2”. It is usually recognized that the person with the certificate can prove eligibility for his proposed activities in Japan only by submitting this certificate upon his landing. However, since the certificate is issued prior to the application for landing, if any circumstances have changed since the issuance of the certificate and prior to his landing in Japan, the alien concerned may be requested to prove his eligibility.

5. “A member of the staff of the organization wishing to accept the alien concerned, or by some other proxy, as provided for in the Ministry of Justice Ordinance” means a member of the staff of the organization wishing to accept an alien, such as a company or a school, or an alien’s relative residing in Japan, etc. Article 6-2 of the Regulation under the Act or Annexed Table IV describes the details for each status of residence. Otherwise, if the person is either a member of the staff of a public-service corporation, which was established in accordance with the permission of the

competent ministers under Article 34 of the Japanese Civil Code, or a notary public, and also if recognized as eligible by the Ministry of Justice, the person may be a proxy for the alien concerned.

<The Relevant Decisions by the Court>

- Article 7-2, paragraph 2 of the Immigration Control and Refugee Recognition Act, Article 6-2, paragraph 3 of the Regulation under the Act, and Annexed Table IV of the Regulation under the Act provide that a Japanese spouse may make an application for a certificate of eligibility for a status of residence on behalf of his/her foreign spouse. The purpose of this provision is to allow the alien concerned to make the application through his proxy for the sake of the alien's convenience, and thus simply designate a potential proxy such as a member of the staff of the Japanese organization or a relative wishing to accept the alien concerned, depending on the type of the status of residence. Therefore, even though the Japanese spouse is given the right of proxy application, the provision per se does not support the Japanese proxy's own interest in living together with his/her foreign spouse. The above-mentioned application should be made based on the real will of the alien wishing to enter Japan, and thus his/her proxy set forth in the above-mentioned provision should make the application only based on the will of the alien concerned, but not on the proxy's own interest. (Tokyo Higher Court, December 20, 1995)

- An alien wishing to land in Japan should make an application for landing to an immigration inspector at the port where he wishes to enter Japan and prove that he fulfills the conditions set forth in Article 7, paragraph 1. However, it is not always easy to prove the eligibility for a status of residence, which is set forth in Article 7, paragraph 2, at the port of entry in a short time. Thus, for the purpose of simplifying and expediting the immigration examination procedures, Article 7-2 provides for the procedure of issuing a certificate of eligibility for a status of residence, that is, upon advance application by an alien intending to land in Japan the Minister of Justice examines whether the alien concerned fulfills the conditions set forth in Article 7, paragraph 1, item (2), and if the alien concerned is found to be eligible for a status of residence, the Minister of Justice issues the certificate stating the eligibility. ... A certificate of eligibility for a status of residence is issued to certify that the alien concerned fulfills the conditions set forth in Article 7, paragraph 1, item 2, but does not guarantee that other conditions for landing set forth in the same paragraph have been fulfilled. While the alien concerned fulfills the conditions related to a status of residence, in a case where he has been found during the process of the examination to be not eligible for other conditions of landing and thus there is no prospect for him to be granted landing permission, the issuance of a certificate of eligibility for a status of residence is meaningless in light of the intent of the issuance of the certificate. Furthermore, it cannot be denied that there is a risk that the certificate might be abused. In consideration of these factors, the proviso of Article 6-2, paragraph 5 of the Regulation under the Act, which stipulates that the Ministry of Justice may refuse to issue a certificate of eligibility for a status of residence under the above-mentioned circumstances, cannot be judged to be against the purpose of proxy application provided for in Article 7-2, paragraph 1. (Tokyo Higher Court, June 16, 1999)

**Article 8 Boarding of Vessel, etc.**

This Article provides that an immigration inspector may board the vessel, etc., for the purpose of

conducting the examination for landing.

### **Article 9 Endorsement Stamp for Landing Permission**

1. An immigration inspector must affix the stamp of landing permission in the passport if he finds, as a result of the examination, that the person concerned fulfills the conditions for landing (paragraph 1), while he must deliver the person concerned to the special inquiry officer if he otherwise finds (paragraph 4).

2. “Physician designated by the Minister of Welfare or the Minister of Justice” in paragraph 2 has been made public by the Minister of Welfare in the way of the Ministerial Announcement no. 123 of 1952 of the Ministry of Welfare upon this paragraph and Article 17, paragraph 1.

3. Writing the status of residence and the term of stay as provided for in paragraph 3 is done by filling into the stamp for landing permission (Annexed Form no. 7 of Article 7 of the Regulation under the Act) the column of figures indicating article, paragraph and item corresponding to the status of residence and the exact duration by days, months or years. The proviso of this Article provides that an indication of the status of residence and the term of stay is not required in case of the landing with the re-entry permission under Article 26, paragraph 1 or with the Refugee Travel Document under Article 61-2-6. This is because in these two cases the status of residence and the term of stay formerly decided in respect to the person concerned would be maintained as long as the holder of re-entry permission or Refugee Travel Document re-enters into Japan within its valid term. Thus, in these cases, only the stamps for landing permission (Annexed Form no. 7 of the Regulation under the Act) are affixed.

4. To land in Japan without getting the stamp for landing permission in violation of paragraph 5 is not only the cause of deportation (Article 24, item 2) but also the act subject to criminal punishment (Article 70, paragraph 1, item 2). In this connection, in the case of the passengers aboard on the ship the provision of this paragraph could be interpreted literally, while in the case of the passengers coming by airplane merely getting off the airplane prior to the landing examination does not consist illegal landing but the passing through the examination lounge without getting the certification of landing permission does.

<The Relevant Decisions by the Court>

- As long as an alien remains in the air terminal building, he is not to be said to have landed in Japan. On the other hand, the freedom to land in Japan without getting the stamp for landing permission is not enjoyed legally by an alien. Thus, even if an alien could not go out of a hotel in the air terminal building without getting the permission for landing, it cannot be said as the virtual detention. (January 25, 1971, Supreme Court)

## **SECTION II HEARING AND FILING OF OBJECTION**

### **Article 10 Hearing**

1. This Article and the next Article concerns on the second and the third steps of the landing procedures. From the consideration about the human rights, the Act makes it open for any alien who could not get the landing permission by an immigration inspector to get the hearing by a special inquiry officer and to further appeal to the Ministry of Justice.

2. This Article provides for the procedures of the hearing of an alien by a special inquiry officer. The hearing is compulsory for an alien who has been found, as a result of the examination by an immigration inspector, to be not in conformity with the conditions for landing. Thus, the alien concerned does not have to request a hearing.

In the hearing, the alien concerned may request the appearance of a representative. Therefore, the alien and his representative may submit the evidence and cross-examine any witnesses (paragraph 3). Also, a special inquiry officer may request the appearance of the witnesses on ex officio basis or on the demand by the alien concerned (paragraph 5).

<The Relevant Decisions by the Court>

- The decision, done by a special inquiry officer in accordance with Article 10, paragraph 7 of the Immigration Control Order, that the alien concerned does not fulfill the conditions for landing is virtually the refusal of the landing permission and therefore it should be interpreted as an administrative action against which an appeal to the court can be filed. (November 25, 1970, Tokyo Higher Court)

- It is natural that the manner of examining landing permission may greatly differ from one case to another, depending on the activities engaged in by an alien or on the duration of stay specified under a status of residence. Furthermore, it is rational as well as legally correct for an alien to be examined accordingly if the real purpose of residence is suspected to be different from that described in the application for a status of residence. Considering the aforementioned aspects, it cannot be said that landing examinations in all cases should necessarily be finished in a very short time. (Tokyo Higher Court, November 26, 1975)

### **Article 11 Filing of Objection**

The comments to the preceding Article should be referred to. The procedures under this Article is



also the procedures to give the special landing permission, by the Minister of Justice, provided for in the next Article.

### **Article 12 Special Cases of Decision of the Minister of Justice**

1. This Article provides for the special case of the decision by the Minister of Justice on the appeal addressed to him, the so-called procedure of special permission for landing. Under this procedure, the Minister of Justice may permit the landing of an alien by his discretion, even if a special inquiry officer makes a correct decision that the alien concerned does not fulfill the conditions for landing.

2. “If the alien concerned has received permission for re-entry”, he may be entitled to special permission for landing. This is because the past residence in Japan prior to his departure from Japan with re-entry permission is given favorable consideration.

3. “If the Minister of Justice finds that there exist circumstances that warrant the granting of special permission for landing”, he may grant the alien concerned special permission for landing. For instance, even though the alien concerned is subject to denial of landing according to the provision of Article 5, paragraph 1, if the grounds for the denial are not so serious and the Minister of Justice finds that there exist circumstances that warrant the granting of special permission for landing, such as the circumstance that the alien concerned has a Japanese spouse, he may grant the special permission. The Minister of Justice is given the authority to decide whether there exists such a special circumstance, and the sphere of his discretion is wide.

4. Paragraph 2 provides that “the permission granted under the preceding paragraph shall be regarded, with respect to the application of paragraph 4 of the preceding Article, as a decision based on the fact that the objection filed is well-grounded”. In accordance with this paragraph, even in a case where an alien is supposed to be ordered to be deported because his objection filed is judged to be not well-grounded, a supervising immigration inspector may issue a stamp for landing permission.

## **SECTION III PROVISIONAL LANDING AND OTHERS**

### **Article 13 Permission for Provisional Landing**

1. This Article provides for the permission for provisional landing before the completion of the landing procedures. The landing procedures have three steps of examinations; (1) the examination by an immigration inspector, (2) the hearing by a special inquiry officer, and (3) the appeal to the Minister of Justice. Until the completion of the above-mentioned procedures the lapse of certain time is naturally anticipated. Although an alien under the landing procedures should be kept from landing in Japan throughout the entire landing procedures, considering airline services, the circumstances of airport facilities, and other relevant circumstances, permission for provisional landing may become desirable. In such a case, a supervising immigration inspector is empowered to grant the alien concerned the permission for provisional landing, which is valid until the entire landing procedures are completed. This is the procedure for the permission of provisional landing. The supervising immigration inspector may impose

conditions deemed necessary such as restriction on the area of movement, and request the deposit of a bail not exceeding two million yen (paragraph 3).

2. A supervising immigration inspector is empowered to undertake the procedures for the detention of the alien having been given the permission for provisional landing, if he has reasonable grounds to suspect that the alien concerned might escape. This is due to the consideration that the indirect enforcement (i.e., confiscation of a bail bond) may not prevent the escape in all cases.

### **Article 13-2 Place to Stay for an Alien Ordered Exclusion**

1. This Article provides that in the event that the immediate effectuation of exclusion of an alien, which is ordered by a special inquiry officer or a supervising immigration inspector, is prevented due to the operational schedule of the vessel, etc. or other reasons not attributable to the alien concerned, the officer may permit the alien concerned to stay in a designated facility in the vicinity of the port for a designated period. This Article also states that the officer “shall inform the captain of the vessel, etc. or the carrier who operates the vessel, etc. by which the alien concerned has arrived of such designation.”

2. The operational schedule of the vessel, etc. may be the main reason to preventing the immediate effectuation of exclusion of an alien. However, in a case where the alien concerned becomes sick after the issuance of the exclusion order and needs to stay in Japan temporarily in order to recuperate, this case can be regarded as one of the “other reasons not attributable to the alien concerned”.

3. According to paragraph 2, not only the alien concerned, but also the captain of the vessel, etc. or the carrier who operates the vessel, etc. should be informed of such designation. That is because the captain and the carrier, etc. are obliged to send back the alien concerned under the provision of Article 59. In accordance with Article 12-2 of the Regulation under the Act, the exclusion should be notified with a deportation order (Article 10, paragraph 1 of the Regulation under the Act) issued to the alien concerned and with a notice of deportation order (Article 10, paragraph 2 of the Regulation under the Act) issued to the captain of the vessel, etc. or the carrier who operates the vessel, etc.

## **SECTION IV SPECIAL CASES OF LANDING**

### **Article 14 Permission for Landing at Port of Call**

1. This Article through Article 18-2 provide for the special cases of landing. While it is a principle that any alien wishing to land in Japan should fulfill the conditions for landing set forth in each item of Article 7, paragraph 1, the procedure of the special cases of landing does not require a visa for crew members or passengers of vessels or airplanes and grants permission for provisional landing under certain conditions without a status of residence. As for the special cases of landing, whether to authorize the landing or not is up to the discretion of an immigration inspector and, unlike the landing application in general mentioned in Article 6 and the following Articles, the decision by the immigration inspector is final and any further appeal is not allowed.

2. This Article provides for the permission for landing at port of call. The permission is available to the transit passengers desiring to land into near-by area of port of entry for the purposes of shopping, rest and other similar activities within 72 hours. The application is to be filed by the captain of the vessel etc. carrying the passenger concerned or the carrier of such a vessel, etc., unlike a general application for landing which an alien wishing to land in Japan files by himself. The application by the captain of the vessel etc. or the carrier of such a vessel, etc. should be filed under their responsibilities and authority. Thus, the application is not a proxy application filed on behalf of the alien wishing to land in Japan.

3. The permission for landing at port of call is available to the passenger with a valid passport, while the crew may get the landing permission for a crew member under Article 16. Permission for landing at a port of call is available to a passenger who is to proceed via Japan to an area outside Japan. Thus, the passenger whose final destination is Japan or who wishes to reside in Japan is not entitled to this permission. "To proceed via Japan to an area outside Japan" usually means coming from one country and leaving for another via Japan. However, there is a case where a passenger comes from one area of one country and leaves for another area of the same country via Japan (for instance, the case of coming from Guam and leaving for Anchorage via Japan). The alien with permission for landing at a port of call may leave Japan from the same port of entry and departure that they have arrived at with a vessel or airplane which is different from the one on which he arrived at, but may not go to other ports of entry and departure and depart from there by a vessel, etc.

4. The excludable alien under each item of Article 5, paragraph 1 cannot get permission for landing at a port of call.

### **Article 15 Permission for Landing in Transit**

1. This Article provides for permission for landing in transit. This permission includes two types, i.e., landing in transit for sightseeing while the vessel is in Japan (paragraph 1) and landing in transit to the neighbor port of entry and departure (paragraph 2). The application is to be filed by the captain of the vessel, etc. carrying the passenger concerned or the carrier of such a vessel, etc.

2. Paragraph 1 provides for the permission for landing in transit (the so-called permission for landing in transit for sightseeing), which is available to the passengers of a ship visiting more than two ports of entry and departure, if the passengers concerned rejoin the same ship at another port of entry and departure in Japan and then leave Japan. This permission is available only to such a passenger of a vessel with a valid passport, while a passenger arriving by an airplane cannot get this permission. Also, this permission is available only to passengers rejoining the same ship and leaving Japan. Thus, if the passengers join a different ship and leave Japan, the permission for landing in transit is not available.

This permission is available for temporary landing in transit while the vessel carrying the passengers concerned is within Japan. Thus, in a case where the vessel leaves Japan and returns to Japan via a port of call of another country, the permission for landing in transit for sightseeing is not available to the passengers concerned even though the vessel left Japan for a very short period. "Transit" in this context means the transit between two different ports of entry and departure within Japan.

In a case where the vessel carrying the passengers concerned makes a call at several ports in Japan, the passengers with the permission for landing in transit do not have to rejoin the vessel at the next port of call. The passengers may rejoin the vessel at any port of call in Japan, and the term of landing not exceeding 15 days is set forth on a case-by-case basis (Article 14, paragraph 4 of the Regulation under the Act).

3. Paragraph 2 provides for the permission for landing in transit, which is available to the passengers of a ship, etc., who intend to remain in Japan not more than 3 days and to go from the port of entry or departure at which they have arrived to a neighbor port of entry or departure at which they would depart by other ship, etc. (the so-called permission for landing in transit to a neighbor port). This permission is available to passengers who intend to go to an area outside Japan, and thus is not available to passengers whose final destination is Japan or who intend to reside in Japan. Also, passengers wishing to get this permission should leave Japan from another port of entry or departure in the vicinity of the port at which the passengers have arrived. Generally speaking, “another port of entry or departure in the vicinity” means a port of entry or departure nearby the port, but it is practically regarded as a port which belongs to the same or neighboring regional immigration bureau covering the port at which the passengers have arrived.

4. The excludable alien under each item of Article 5, paragraph 1 cannot be granted the permission for landing in transit.

## **Article 16 Landing Permission for Crewman**

1. This Article provides for the landing permission for crewmen, which is one of the special cases of landing permission.

2. “Transferring to another vessel, etc.” includes the following cases; (1) a crewman who entered Japan on board a vessel, etc. transfers to another vessel, etc. in Japan, (2) an alien who entered Japan as a passenger of a vessel, etc. transfers to another vessel, etc. as a crewman, and (3) vice versa.

3. “Other similar purposes” includes the case where a crewman communicates with government establishments of his country in Japan regarding vessel schedules, etc., but does not include the case where the crewman attends a conference or gathering which is not related to vessel schedules, etc.

4. Paragraph 1 provides that an application for landing permission for a crewman should be made by “the captain of the vessel, etc., or the carrier who operates the vessel, etc., (including the vessel, etc. he is to board)”. That is because, like other special cases for landing permission (excluding landing permission for temporary refuge), it is rather interpreted that the crewman concerned shall be granted landing permission under the responsibilities of the above-mentioned persons.

5. “Permission for crewmen’s landing” should be granted only once, and in principle, the permission should be granted under the provision of paragraph 1.

6-1. “Permission for crewmen’s multiple landing to a crewman” is described in items 1 and 2 respectively of paragraph 2. Once the permission is granted, multiple landing by the crewman concerned may be granted within 1 year from the day of permission unless the permission is

revoked. Under Article 57, the captain of the vessel, etc. is responsible for reporting to the Japanese authorities with respect to the alien's entry into or departure from Japan .

6-2. Permission for crewmen's multiple landing is available to a crewman under the following conditions; (1) a crewman is a crew member of a scheduled flight or a vessel such as a ferry between Shimonoseki and Pusan or a container vessel frequently plying the Pacific Ocean, (2) he does not have any special problems with regard to being granted such permission, and (3) the management of crew members by the carrier operating the vessel is appropriate.

6-3. In respect of the permission for crewmen's multiple landing, crewmen of a vessel and crewmen of an airplane are given different requirements and details of the permission as the table shows below.

This is because it is very exceptional that crewmen of an airplane are on board the same airplane and also because the period of their landing is short while crewmen of a vessel usually continue to be on board the same vessel concerned.

	A vessel	An airplane
The term of landing permission	While the vessel is in Japan.	For a maximum of 15 days from the arrival date in Japan.
The port of entry or departure	There is no restriction as long as the port is in Japan.	The airplane should depart from the port of entry or departure at which the airplane has entered Japan.
The relation between the crewman concerned and the vessel or the airplane	The crewman should belong to the vessel concerned and proceed along with the vessel.	The crewman should belong to the carrier which operates the airplane and depart from Japan by an airplane operated by the same carrier.

7. "During multiple calls of the vessel" in paragraph 2, item 1 means that a crewman may land in Japan for as many days as necessary as long as the vessel concerned is in Japan.

8. "The same airport" in paragraph 2, item 2 means that a crewman should enter and depart from Japan from the same airport for every entry into Japan, but does not mean that he should depart from Japan from the same airport every time while the permission for crewmen's multiple landing is valid.

9. The form of "a crewman's landing permit" described in paragraph 3 is designated by the Ministry of Justice Ordinance. The permit is a laminated card which is available for multiple use and similar to an identification (Annexed form no. 22-3 of the Regulation under the Act), while the permit for one time landing is one sheet of paper (Annexed form no. 21 of the Regulation under the Act).

10-1. In respect of "such restrictions as period of landing, area of movement (including route to be followed in transit) and others which he may deem necessary", which are described in paragraph 4, an immigration inspector shall impose these restrictions in accordance with the Ministry of Justice Ordinance (Article 15, paragraph 3 of the Regulation under the Act).

10-2. In granting the permission provided for in paragraph 1, “the immigration inspector may impose upon the crewman such restrictions as period of landing, area of movement (including route to be followed in transit) and others which he may deem necessary, and if deemed necessary, have his fingerprint taken”. The purpose of this provision is to ascertain the identity of the crewman through his fingerprint, and to restrict his area of movement to control his residence in Japan depending on necessity, because the crewman granted a crewman’s landing permit can land in Japan only if he is in the possession of the permit.

In contrast, the crewman granted permission for multiple landing under the provision of paragraph 2 is not subject to the restrictions of area movement or fingerprinting. This is because the permission for multiple landing is granted only if none of the crewman, the captain of the vessel, etc. carrying the crewman, and the carrier who operates the vessel is qualified for the permission. Thus, the permission for multiple landing is not supposed to be available to the crewman upon whom the above-mentioned restrictions such as area movement or fingerprinting are imposed.

11. The excludable alien under each item of Article 5, paragraph 1 cannot get permission.

12. Paragraph 5 provides that “(if an immigration inspector) finds that a crewman is to land with the permission mentioned in Paragraph 2 and falls within one of the items of Article 5, Paragraph 1, (the immigration inspector) shall revoke the permission immediately”. If a crewman granted the permission for multiple landing intends to land in Japan several times, in a case where the crewman concerned has been found to fall within one of the excludable classes, the crewman’s permission for multiple landing shall be revoked immediately and he shall be prevented from landing in Japan hereafter. The revocation is, not due to a defect in the permission but due to a learned pertinent fact. In a case where a crewman has already been found to fall within one of the excludable classes upon the granting of permission for multiple landing, it is the revocation of a defective administrative decision on the grounds that paragraph 5 is not applicable to the crewman concerned, but not based on paragraph 6.

13-1. Beside the case where a crewman granted the permission for multiple landing has been later found to fall within one of the excludable classes, the permission for multiple landing shall be revoked in the following cases where it is regarded as inappropriate to keep the permission available to the crewman; (1) the captain of the vessel, etc. or the carrier who operates the vessel, etc. does not assume his required responsibilities, (2) the crewman concerned has committed a crime, or (3) it has been found that the crewman concerned violates the conditions of the permission for multiple landing. The revocation under paragraph 7 is also due to a learned pertinent fact.

13-2. Paragraph 7 provides that “when the crewman is in Japan the Immigration Inspector shall designate a term within which the crewman shall return to his ship or leave Japan.” The immigration inspector revokes the permission for multiple landing no matter where the crewman is, that is, inside or outside of Japan. However, if the crewman is inside Japan, since he cannot stay in Japan due to the revocation of landing permission, the immigration inspector may designate the extension of time necessary for the crewman to return to the vessel or to depart from Japan.

## **Article 17 Permission for Emergency Landing**

This Article provides for the permission for emergency landing, which is available to the aliens aboard a vessel, etc. (passengers and crew members), for the purposes of medical treatment in case of sickness, disease or accident. The person concerned shall be granted permission for temporary landing until the cause thereof ceases to exist. This permission is taken from the humanitarian consideration, therefore, even if the person concerned does not possess a passport or a crewman's pocket-ledger, or even if the person concerned is not issued a visa, or even if the person concerned does fall under one of the excludable classes of aliens under Article 5, paragraph 1, an immigration inspector can authorize the landing.

An immigration inspector should permit the landing if he finds urgent need for the landing. To make sure of the judgment, it is subject to medical examination by a physician designated by the Minister of Welfare or the Minister of Justice.

The application for permission for emergency landing is to be filed by the captain of the vessel, etc., carrying the person concerned or the carrier of such a vessel, etc., and they are responsible for the costs of maintenance, medical treatment, etc. incurred by the person concerned (paragraph 3).

## **Article 18 Landing Permission in the Event of a Disaster**

1. This Article provides for the landing permission due to disaster, which is available to the aliens (passengers and crew members) aboard the vessel, etc. in distress. "The vessel, etc. in distress" means the vessel, etc., which has met with a grave accident hindering the normal operation of the vessel, etc. This permission concerns with the accident of a vessel, etc. while the permission under the preceding Article concerns with the disease or accident of the person concerned.

Landing permission due to a disaster is also a humanitarian consideration and therefore, similar to the previous Article, the possession of a passport, etc., the acquisition of a visa, and/or the excludable status of the alien provided for in Article 5, paragraph 1 do not affect the decision by an immigration inspector.

2. The application for landing permission due to disaster is to be filed by the mayor of the city, town or village who carries out the relief and protection under the provision of the Sea Casualties Rescue Law, or by the captain of the vessel, etc. who has afforded relief and protection, to the alien victims. Upon an application filed by the above-mentioned persons, an immigration inspector decides whether there exists the necessity of landing for the purposes of relief and protection, medical treatment, preparation for repatriation, etc. However, even if the immigration inspector finds an urgent need for landing to rescue and protect the alien victims, in a case where he judges it inappropriate to grant the alien concerned permission for landing in consideration of other circumstances, he may not grant the alien concerned permission for landing (paragraph 1).

3. In a case where an immigration inspector has taken delivery of an alien who was on board the vessel, etc. in distress from a police official or maritime safety official, the immigration inspector should grant the alien concerned the permission for landing. Police officials are responsible for protecting human life, body and property under the provisions of Article 2, paragraph 1 and Article 63 of the Police Law (Law no. 162 of 1954), and maritime safety officials are responsible

for rescuing sea casualties under the provisions of Article 2, paragraph 1 and Article 14 of the Maritime Safety Law (Law no. 28 of 1948). In a case where a police official or a maritime safety official found an urgent need to offer relief and protection to an alien victim, each official does not need to apply for landing permission to an immigration inspector on behalf of the alien. In addition, the immigration inspector who has taken delivery of such an alien from a police official or maritime safety official does not need to judge the urgent necessity of the relief and protection. Thus, the immigration inspector may grant the alien concerned the permission for landing immediately (paragraph 2).

However, under the provision of paragraph 2, like paragraph 1, only an immigration inspector is in a position to judge the appropriateness of the permission for landing. Thus, in a case where an immigration inspector judges it inappropriate to grant the alien in distress permission for landing in the event of a disaster, the immigration inspector may not take delivery of the alien concerned from a police official or maritime safety official.

#### Article 18-2 Landing Permission for Temporary Refuge

1. This Article provides for the issuance of landing permission for temporary refuge. Permission for temporary refuge shall be granted by an immigration inspector in accordance with the required procedures, if the alien on board a vessel, etc. may be determined as a refugee, and also if it is considered as reasonable to enable the alien to land at least temporarily.

Those who fear persecution in their home countries for some reason may avoid pursuit by the authorities of their home countries by being granted entry and stay by other countries as an effect of the territorial sovereignty of the countries admitting them. This treatment is granting “territorial asylum”. The procedure of temporary refuge under this Article by which the alien who may be determined to be a refugee may be granted entry and stay in Japan at least temporarily with simple procedures is, in its essence, a conferring of territorial asylum on the person concerned.

The application for landing permission for temporary refuge is to be filed by the alien concerned due to the nature of the application, unlike other special cases of landing permission (refer to the commentary 2 of Article 14).

2. “The grounds provided for in Article 1, paragraph A-(2) of the Refugee Convention” in paragraph 1, item 1, means “the race, religion, nationality, social group and/or political opinion”, while “other equivalent reasons thereto” means other similar reasons such as sex, age, birth, family status, and so on. Specific situations originating from war or civil war may be included in the latter, depending on the circumstances. Landing permission for temporary refuge is to be granted a person who claims to be a refugee, but not a person already recognized as a refugee, focusing on the likelihood for the person concerned to be a refugee as well as other relevant circumstances. Therefore, the reasons which have compelled the person concerned to leave the country are not restricted to those provided for in Article 1, Paragraph A-(2) of the Refugee Convention. In this respect, this Article is not available to those who left their countries and intend to enter other countries for economic reasons, such as seeking higher income, etc.

3. “It would be appropriate to grant him permission for temporary landing” in paragraph 1, item 2, means that, from humanitarian considerations, it would be advisable to end the pursuit by the home authorities by admitting the person concerned and give him some protection.

The judgment by an immigration inspector in this regard would be based on the statement by the



person concerned about the circumstances in his home country, the escape from his country and so on and/or on the facts known to the public and the government, but any other type of useful information would be referred to for the judgment.

As it is evident from the conditions for landing permission for temporary refuge under paragraph 1, item 1, granting the permission does not mean that the alien is to be recognized as a refugee. Thus, even though the alien granted landing permission for temporary refuge applies for refugee status under the provisions of Article 61-2, the permission does not guarantee that the alien concerned shall be recognized as a refugee.

4. When an immigration inspector gives permission for temporary refuge, he may impose such restrictions as term of landing, place of stay, area of movement and other conditions deemed necessary and may have the fingerprints of the person concerned taken (paragraph 3).

Restrictions on the term of stay have been thought necessary because the landing permission for temporary refuge might be granted to the person whose refugee status might be refused and because it is necessary to ascertain periodically whether the circumstances needing temporary refuge continue or not. In addition, restrictions on the place of stay and area of movement have been thought necessary because, among those who may be given landing permission for temporary refuge with simple procedures, some of them might be a burden to the public order or public health. The term of stay is to be decided within 6 months (Article 18, paragraph 4 of the Regulation under the Act), and, in a case where the circumstances requiring temporary refuge still exist, the term of stay would be extended. Violation of the restrictions thus imposed constitutes a criminal offense (Article 72, item 3).

The reason why an immigration inspector may have fingerprints taken is that most persons who may be given the landing permission for temporary refuge may not carry a passport or any other official identity paper and frequently fingerprints may be necessary to certify the identity and to pursue legitimate immigration control.

#### <The Relevant Decisions by the Court>

- In a case where an application for landing permission for temporary refuge was rejected and a deportation order was subsequently issued to the applicant concerned, these two dispositions, i.e., the rejection of the application for landing permission for temporary refuge and the deportation order are separate and independent administrative dispositions with different purposes and procedures. Thus, the plea calling for revocation of the decision of denial of landing permission is neither beneficial nor legitimate. (Chiba District Court, April 15, 1986)

- There are no legal grounds to interpret that a person, under the procedures of applying for landing permission for temporary refuge, is likely to be granted the permission. (November 13, 1986)

## CHAPTER IV RESIDENCE AND DEPARTURE

### SECTION I RESIDENCE, CHANGE OF STATUS OF RESIDENCE, AND EXTENSION OF PERIOD OF STAY

#### Article 19 Residence

1. This Article clarifies the activities in which an alien under status of residence shall or shall not engage. Paragraph 1 provides that an alien under the status of residence specified in the left-hand column of Annexed Table II is not subject to any restrictions of his activities in Japan while an alien under the status of residence specified in the left-hand column of Annexed Table I shall not engage in any activities not corresponding to the activities specified in the right-hand column of Annexed Table I, such as activities involving the management of a business involving income, or activities for which he receives remuneration. Paragraph 2 provides that when an alien who is a resident under the status of residence specified in the left-hand column of Annexed Table I has submitted an application to engage in activities involving the management of business involving income or activities for which he receives remuneration, these activities are not described in the right-hand column of the same Table though, to the extent that the activities under his current status of residence are not hampered, the Minister of Justice may grant permission for an activity outside qualifications if he finds that there are reasonable grounds.

2. Paragraph 1 provides that “an alien who is a resident under the status of residence specified in the left-hand column of Annexed Table I shall not engage in the activities described in the following subparagraphs, with regard to the categories identified therein, except where he engages in them with permission granted pursuant to Paragraph 2 of this article.” This paragraph clarifies that a resident under the status of residence specified in the left-hand column of Annexed Table I shall be subject to restrictions of activities in Japan.

3-1. A resident under the status of residence specified in the left-hand column of Annexed Table I (1) or (2) is originally permitted to engage in specific working activities in Japan. However, the activities are limited to those specified in the right-hand column of Table I (1) and (2) corresponding to each status of residence. Thus, except for a resident under the permission for an activity outside qualifications by the Minister of Justice as provided for in paragraph 2, the above-mentioned resident shall not engage in “activities involving the management of a business involving income or activities for which he receives remuneration”, which do not correspond to the activities specified in the right-hand column of Table I (1) and (2).

3-2. A resident under the status of residence specified in the left-hand column of Annexed Table I (5), i.e., under the status of residence for designated activities, except for a resident granted the permission for an activity outside qualifications by the Minister of Justice as provided for in paragraph 2, shall not engage in “activities involving the management of a business involving income or activities for which he receives remuneration”, which are not designated by the Minister of Justice.

3-3. A resident under the status of residence specified in the left-hand column of Annexed Table I (3) and (4), except for a resident granted the permission for an activity outside qualifications by the Minister of Justice as provided for in paragraph 2, is prohibited from working in Japan and thus shall not engage in “activities involving the management of a business involving income or activities for which he receives remuneration.”

4-1. “A business” in the context of “activities involving the management of a business” means a repetitive and continuous activity toward a certain purpose, and it does not matter whether the entity of a business is an individual or a corporation or whether the purpose of the business is profit-making or not. However, it is regarded as reasonable to restrict such a business to “a business involving income”. Activities such as retailing, manufacturing, or agriculture, etc., where such an activity involves income but cannot be categorized as “an activity for which he receives remuneration,” or activities such as managing a school or establishing a religious group, etc., the purpose of which is nonprofit, correspond to “a business involving income”.

4-2. “An activity for which he receives remuneration” means an activity involving receipt of value for the provision of certain labor, for instance, working in the employment of others or engaging in an activity involving receipt of money or commodities for the provision of labor, services or clerical work. “Remuneration” should come only from an entity whose fund source is within Japan. Thus, in a case where an employee of a foreign firm visits Japan for a short term and engages in liaison services, etc., the activity does not correspond to the one involving “remuneration.”

As it is provided that “excluding rewards for lectures not done as a matter of business, incidental remuneration in daily life and others described in the Ministry of Justice Ordinance,” the above-mentioned items are not regarded as “remuneration”. For instance, an activity where a person receives a small amount of money for baby-sitting for a friend or an activity where a person receives a transportation fee for participation in a quiz show from a TV company, it would be unnecessary to control such an activity belonging to the daily life of the alien concerned as an activity outside qualifications. More details are provided for in Article 19-2 of the Regulation under the Act. In respect of the amount of such money, there are no specific restrictions provided for.

5-1. “Permission” provided for in paragraph 2 is called “permission for an activity outside qualifications”, which is often an activity like part-time work. In a case where an alien intends to cease engaging in the activity corresponding to his status of residence and to engage in a new activity stipulated under a different status of residence, the alien concerned should undergo the procedures for changing a status of residence in accordance with Article 20. Also, even under the permission for an activity outside qualifications, if the person concerned engages in an activity beyond the permission, it means that he has violated paragraph 1. In this context, if a person engages in an activity outside qualifications against paragraph 1, he shall be subject to criminal punishment (Article 73). Furthermore, if it has been found that he apparently devotes most of his time to the activity, he shall be subject to not only more severe criminal punishment (Article 70, paragraph 1, item 4) but also to possible deportation (Article 24, item 4-(a)).

5-2. In a case where an alien under a status of residence for designated activities intends to engage in activities involving the management of a business involving income or activities for which he receives remuneration although none of them are stipulated as his designated activities, he needs permission for an activity outside qualifications even though it is one of the activities which the Minister of Justice stipulates as designated activities under the Official Gazette of the Minister of Justice.

5-3. Since there are no restrictions for a person who is a resident under a status of residence stipulated in the right-column of Annexed Table II, he is not subject to permission for an activity outside qualification.

6. “If he finds that there are reasonable grounds” means that the granting of permission is up to the discretion of the Minister of Justice.

7. Paragraph 3 provides for legal applications to the case in which a crewman, who landed in Japan under landing permission for a crewman, permission for emergency landing or landing permission in the event of a disaster, has been discharged in Japan. Since he is no longer a crewman, he shall be required to have a passport, not a crewman’s pocket-ledger. However, considering that it is impractical to oblige him to obtain a passport, he may continue to reside in Japan without a passport.

#### Article 19-2 Certificate of Authorization of Employment

1. This Article provides that should an application be submitted by an alien residing in Japan, the Minister of Justice may issue a certificate of authorization for employment, which states that the applicant is eligible for activities involving the management of a business involving income or activities for which he receives remuneration.

2-1. Under the procedure of issuing a certificate of authorization for employment, by request of an alien who is authorized to work, such a certificate shall be issued for convenience to aliens who work in Japan and also to their Japanese employers.

2-2. In connection to a crime of promoting illegal work as provided for in Article 73-2, a person who intends to employ an alien should ascertain the validity of a status of residence and the period of residence of the alien concerned. Given the necessity that an alien may be required to certify his eligibility of employment, a certificate of eligibility for employment is to be issued at his request so that both parties, i.e., an alien and an employer, can easily make a confirmation of his eligibility for employment for mutual convenience.

3. Paragraph 2 is an instructive provision so that the procedure of issuing a certificate of eligibility for employment would not cause any discriminative treatment in employment and so on to such aliens who are long-term stayers.

4. A certificate of eligibility for employment is also available to an alien who engages in activities involving the management of a business involving income or activities for which he receives remuneration under the permission for an activity outside qualifications.

5-1. The purpose of a certificate of eligibility for employment is to show it to a Japanese employer and so on. Thus, unlike a passport or a certificate of alien registration, an alien is not required to carry it at all times.

5-2. Since the issuance of a certificate of eligibility for employment is part of administrative services, an alien should pay for the issuance fee (680 yen currently), which is set forth by Cabinet Order in consideration of the actual charge (Article 67-2).

6. “In employing, etc.” includes, besides employment agreement, employment through commission agreement, contractor agreement or dispatch agreement, etc.

7. “When it is evident that the person concerned is authorized to engage in activities involving the management of a business involving income or activities for which he receives remuneration” in paragraph 2 includes the following cases; (1) when a passport or a certificate of alien registration indicates the activities, etc. in which he may engage, (2) when it is evident as a publicly-known fact that the alien concerned is a permanent resident, and (3) in consideration of

the purpose of the certificate, when it is not reasonable for an employer, etc. to ask the alien concerned to show or submit his certificate of eligibility for employment.

8. Despite the fact that it is evident that an alien is eligible for work, if an employer, etc. refuses to employ the alien concerned, cuts his salary or discharges him, etc. only because he does not show or submit his certificate of eligibility for employment, this treatment is regarded as “(to) discriminate”.

## **Article 20 Change of Status of Residence**

1. This Article provides for the procedure for change of a status of residence.

2. In the case of “change of status of residence for a permanent resident”, since the change shall proceed in accordance with Article 22, paragraph 1, this Article is not applicable (proviso of paragraph 2).

3-1. “Reasonable grounds” in paragraph 3 are judged based on the discretion of the Minister of Justice. When an alien residing in Japan, who wishes to have his status of residence changed and to engage in new activities, applies for the change of his status of residence, the Minister of Justice may give the permission. In order for the alien concerned to be granted the change of his status of residence, in light of the purpose of the procedure of a status of residence, he shall be examined to see if his newly proposed activities meet the conditions for a new status of residence, and he should also fulfill the conditions for landing. The judgment as to whether there are “reasonable reasons” to grant the change of a status of residence is exclusively up to the discretion of the Minister of Justice. The Minister of Justice makes this judgment, taking into account all relevant aspects such as the situations of the applicant’s residence in Japan, the necessity and appropriateness of the applicant’s change of status of residence, etc. Even though the Minister of Justice finds that the applicant’s newly proposed activities meet the conditions for his new status of residence, in a case where he judges that there are no reasonable grounds to grant the change of a status of residence, he may not grant the change (this is also applicable to an extension of the period of stay, which is provided for in Article 21).

3-2. An applicant whose status of residence is Temporary Visitor, which is given to a person wishing to reside in Japan for sightseeing, etc., is expected to stay in Japan for a short period. Thus, the issuance of the visa, the landing procedures, etc. are simplified, and the change of his status of residence shall not be granted unless the application is made based on “special unavoidable circumstances” (proviso of paragraph 3).

4. Considering that there are aliens who do not possess a passport such as the aliens who had entered Japan without a passport but have been residing in Japan thanks to special permission for residence, for the benefit of their offspring or stateless persons, “A Certificate of Status of Residence” may be issued to these people in cases where permission is granted for a change of a status of residence, permission for extension of period of stay, permission for permanent residence or permission for a status of residence (Annexed form no. 32 of the Regulation under the Act).

<Relevant Decisions by the Courts>

- An alien without a status of residence does not have the right to apply for a change of a status of residence. Even if the alien concerned applies for the change, the Minister of Justice is not obliged to respond to the application. (Nagoya District Court, June 28, 1991)

- If an alien wishes to enter Japan with a certain status of residence, the alien concerned is required to meet the conditions for the status of residence. Therefore, also in a case where an alien applies for a change of a status of residence, it is evident that the alien is required to meet the conditions for his newly applied status of residence. (Tokyo District Court, March 30, 1994)

- When the Minister of Justice judges whether there are reasonable grounds to grant the change of a status of residence into “skilled labor”, he refers to the documents submitted by the applicant and makes the decision whether the applicant has such professional skill. At the same time, the conditions for landing permission should also be fully examined. However, unlike the landing examination for a new entrant into Japan, given the fact that the applicant concerned is already residing in Japan, it can be said that such a decision could be made in consideration of various relevant factors such as how the applicant concerned has been behaving while residing in Japan, how the circumstances surrounding the applicant concerned have changed, how the situations at home and overseas have changed, etc. (Tokyo District Court, December 21, 1993)

- From the viewpoint of monogamy which our country has adopted to maintain the order of marriage, the Minister of Justice judged it inappropriate for the alien concerned, who will continue bigamous marriage without being legally married, to be granted long-term residence as “a Long Term Resident,” and this judgment should be regarded as reasonable.

As a result of this judgment, the appellant, who is a minor, will not be able to live together with his/her mother, who is the alien concerned, and thus will be deprived of his/her rights of being fostered. However, even though this is taken into account, it cannot be said that the judgment by the Minister of Justice deviates from the extent of his discretion or abuses his discretion illegally. (Tokyo Higher Court, May 17, 1995)

- The alien, who was granted the change of a status of residence from “a long term resident” into “a temporary visitor”, filed a suit against the denial of an extension of the period of stay as a long term resident, which was his previous status of residence. However, his suit is not productive. (Tokyo Higher Court, September 16, 1992)

## **Article 21 Extension of Period of Stay**

As each status of residence designates a certain period of stay, an alien with a status of residence cannot stay beyond the designated period of stay. A violation against this rule falls under a deportation cause (Article 24, item 4, sub-item (b)) and constitutes a criminal offense (Article 70, paragraph 1, item 5). However, if an alien was unable to complete the purpose of his residence within the designated period of stay, for instance, if a student could not complete his study, or if an alien continues his business activities in Japan, only when it is considered appropriate to grant the alien concerned an extension of period of stay, this Article provides that the Minister of Justice may grant such permission based on his discretion.

<Relevant Decisions by the Courts>

- Whether to authorize the alien's entry and stay can be decided at the discretion of the sovereign State in accordance with established international customary law. Article 21 of the Immigration Control Order should not be interpreted as to confer the alien the right to be given the extension of period of stay. The extension of period of stay is up to the discretion of the Minister of Justice not dependent on the expectations of the alien concerned that his period of stay may be extended.

Therefore, even if his period of stay had expired while his application for the extension of period of stay was pending and if his application was denied after the expiration of his original period of stay, it cannot be said that the residence from such an expiration to the date when the disapproval of the extension was notified had been legal. The residence should be interpreted as overstay beyond the designated period of stay. (April 9, 1968, Osaka Higher Court)

- Under the Immigration Control Order, an alien is granted permission for landing and residence in Japan with a designated period of stay, and the Minister of Justice grants an extension of period of stay only when he finds there are reasonable grounds. The Minister of Justice shall regularly examine how the alien concerned has been residing in Japan, and the necessity and appropriateness of the residence, etc., and shall decide whether to grant the extension. Although the conditions for an extension of period of stay are stipulated on the whole, the criteria of judgment are not specifically provided for. It is considered that the judgment is exclusively up to the discretion of the Minister of Justice and that he is given wide discretion.

When the court decides whether the judgment of the Minister of Justice is illegal or not, presupposing that the judgment was made under his right of discretion, the court examines; (1) whether the judgment of the Minister of Justice entirely lacks fundamental understanding of the case because the judgment was made based on his erroneous assumptions about important facts of the case, or (2) whether it is evident that the judgment obviously lacks validity in light of common ideas of the society because the Minister clearly lacked rationality in evaluating the facts of the case. When it has been found that the aforementioned factors are applicable to the judgment of the Minister of Justice, it is reasonable to consider that the judgment exceeds the extent of his authorized discretion or was abusive and thus the judgment can be regarded as illegal.

Excluding some basic human rights guaranteed only to Japanese citizens, it should be interpreted that all aliens residing in Japan be equally guaranteed basic human rights. In respect of freedom of political activities, excluding activities which would influence decision-making or implementation of the politics in our country, freedom is also guaranteed to aliens. However, this freedom is guaranteed only under the procedure of a status of residence. Therefore, it cannot be understood that because the alien concerned is guaranteed basic human rights his political activities should not have a negative impact on his extension of period of stay. (October 4, 1978, Supreme Court)

- The provisions on the period of stay and its extension together with those on the status of residence are indispensable to the fair and legitimate control on the aliens' entry into and stay in Japan. They are not minor provisions in the procedures.

The circumstances under which the plaintiff was detained in the prison and the fact that no official in the prison gave instruction on the application for an extension of period of stay cannot be used as a good cause that the person concerned was in the very difficult situation in applying for the extension of period of stay. (June 29, 1976, Osaka District Court)

- When a person, who has a status of residence under Article 4, paragraph 1, item 16 of the Immigration Control and Refugee Recognition Act and Article 2, item 3 of the Regulation under the Act, has applied for an extension of period of stay, the Minister of Justice has wide discretion to decide not only whether to grant the extension but also how long the person concerned may reside in Japan (not exceeding 3 years in the case of being granted the extension). Even though an alien is granted an extension of period of stay up to 1 year and thus his period of stay was reduced from 3 years, which was attached to his previous status of residence, it should not be understood that the reduction of his period of stay violated or will threaten his rights and legal interest. Therefore, his lawsuit calling for the withdrawal of the decision by the Minister of Justice is not productive. Also, the lawsuit calling for 3 years as a fixed period of stay in the case of being granted an extension of period of stay is illegal because it constitutes a so-called binding lawsuit. (April 6, 1992, Tokyo Higher Court)

- In the case of making a decision to grant the alien concerned an extension of period of stay before he has been convicted, even though the conviction is still pending, it is natural to refer to the charge indicted in the criminal procedures, the findings of the criminal facts, and the facts related to his behavior and conduct and to use them as critical information as to his behavior and conduct. There are no grounds that the principle of presumptive innocence should be employed in the decision-making policy of an extension of period of stay. Also, in a case where an alien under a criminal prosecution applies for an extension of period of stay, the Minister of Justice makes a decision to grant the extension by independently examining the facts regarding his behavior and conduct as well as the facts indicted. Otherwise, the Minister of Justice may hold his decision until the court renders a judgment on the facts indicted. This is within the extent of his discretion. (September 6, 1993, Tokyo District Court)

- Even though the plaintiff fulfills the conditions for a status of residence for “spouse of Japanese national, etc.”, the marriage between the plaintiff and her Japanese husband has already deteriorated and they have been living separately for more than 3 years. Furthermore, the plaintiff has been actively involved in aliens’ illegal stay or illegal work. Also, the plaintiff and her Japanese husband did not notify the defendant of their correct address, and made an application for an extension of period of stay to the defendant with a false address. As a result, the defendant had difficulty finding their living relationship. From the position of the defendant, all this behavior and conduct by the plaintiff should not be tolerated under the immigration control administration. On these accounts, it cannot be said that the decision given to the plaintiff completely lacks understanding of the basic facts, and that the decision also extremely lacks validity in light of common ideas of the society. (November 12, 1996, Osaka District Court)

- An alien wishing to land in Japan should meet the conditions stipulated by the Ministerial Ordinance to Provide for Criteria pursuant to Article 7, Paragraph 1 (2) of the Immigration Control and Refugee Act. While the criteria directly constitute the conditions for landing of an alien, these criteria are provided to adjust the level of aliens permitted to land in Japan in consideration of the effects on Japan’s economy and public welfare as a result of these aliens’ entry into and residence in Japan. Thus, given the nature of the criteria, it is natural that the criteria should be taken into account in deciding whether to grant an extension of period of stay, that is, whether to grant an alien a continuous status of residence for the extended period.

A State has the freedom to decide under what kind of conditions the State accepts an alien and permits his residence. An alien is granted permission for residence only under the legal procedure



for aliens' residence in the State concerned. Therefore, even though a State stipulates toward an alien wishing to engage in investment or management of a business in Japan landing conditions such as the size or the number of employees of his business entity, or even though a State considers such conditions when the State decides whether to grant an extension of period of stay, it should be understood that such a State policy does not interfere at all with the freedom of business. (October 24, 1996, Tokyo District Court)

- It is possible for an alien to continue a lawsuit through his representative even after he has left Japan. Also, he may be permitted to enter Japan under the required procedures when he has to appear at the court. Thus, even though the alien concerned has left Japan due to the Minister of Justice's denial of the extension of period of stay, it cannot be said that the alien concerned has lost his right of filing a lawsuit at a Japanese court. (May 30, 1980, Supreme Court)

- An extension of period of stay is not guaranteed as a right for an alien. The alien concerned may reside in Japan and engage in the activities specified in his status of residence only after his extension of period of stay becomes valid, i.e., after his new period of stay is described in his passport or Certificate of Status of Residence or after such a Certificate of Status of Residence is issued. "Any person who stays in Japan beyond the period of stay described in his passport or Certificate of Status of Residence" in Article 24, item 4, sub-item (b) of the Immigration Control and Refugee Recognition Act means that regardless of denial of an extension of period of stay such a person fulfills the conditions for the denial only because his period of stay described in his passport or Certificate of Status of Residence expires. Therefore, even though an alien has been denied an extension of period of stay after his period of stay expired, this does not mean that the alien concerned loses his status of residence because of the denial. Unless the period of stay is described in his passport or Certificate of Status of Residence upon the permission of the extension of period of stay, the alien concerned naturally loses his status of residence when his period of stay expires. (September 12, 1986, Yokohama District Court)

## **Article 22 Permission for Permanent Residence**

1. This Article concerns a person wishing to have his status of residence changed to "a permanent resident". This Article is a special case of change of a status of residence under Article 20 (Change of Status of Residence). Considering that those who are given a status of residence as a permanent resident are not restricted on their activities or the period of stay, the conditions and procedures for permanent residence are separately provided for in this Article.

2. Paragraph 2 provides for the conditions to be fulfilled under the permission for permanent residence. "The alien's behavior and conduct must be good" in item 1 means that the level of behavior and conduct should be expected of an ordinary person in Japanese society.

"The alien must have sufficient assets or ability to make an independent living" in item 2 means that the level of assets or ability to guarantee the stable life must be sufficient for the anticipated future.

3. The proviso of paragraph 2 provides that permanent residence may be granted to a spouse and children of a Japanese national, a permanent resident or a special permanent resident provided for under the Immigration Control Exemption Law, even if they do not fulfill the above-mentioned two conditions, i.e., "good behavior and conduct" and "sufficient assets or ability to make an

independent living”. This proviso was due to the consideration that the family member of a Japanese national, a permanent resident or a special permanent resident should be given a stable status if possible. However, it should be recognized that this proviso is to help the situation of a spouse or children of the above-mentioned persons but does not modify the discretionary nature of permission for permanent residence of the Minister of Justice because permission for permanent residence is a matter of national interests of Japan.

In respect of a person who was recognized as a refugee under Article 61-2, the person may be permitted permanent residence by the Minister of Justice even if the person does not fulfill the condition of “sufficient assets or ability to make an independent living” in item 2. (Article 61-2-5)

4. When the Minister of Justice gives permission for permanent residence, he has an immigration inspector stamp the permission in the passport if the person concerned has a passport. If the person concerned does not have a passport, the Minister of Justice has an immigration inspector issue a Certificate of Status of Residence which states that the person concerned is permitted permanent residence (paragraph 3).

<Relevant Decision by the Court>

- Article 22 of the Immigration Control Order provides that “the alien’s behavior and conduct must be good” as one of the conditions to grant permission for permanent residence. Since this restrictive provision does not violate Article 22 of the Japanese Constitution, the decision to revoke permission for permanent residence is legally tenable in a case where the alien concerned has a criminal record. (October 5, 1959, Tokyo Higher Court)

## **Article 22-2 Acquisition of Status of Residence**

1. This Article provides for the procedures of acquisition of status of residence for those to whom the Act becomes applicable for the first time in Japan in such occasions as renouncement of Japanese nationality in Japan, birth in Japan, and so on.

2. “Any person who has renounced Japanese nationality” means a person who has lost Japanese nationality due to the effectuation of the Peace Treaty (see the reference at the end of the commentary in Article 2).

3. “By birth or for any other cause” includes, besides birth in Japan, the occasion in which a person loses Japanese nationality under the Nationality Act when the person concerned chooses another nationality (Article 14 of the Nationality Act).

4. In a case where the application is made for acquisition of a status of residence, the provisions for change of a status of residence under Article 20, paragraphs 3 and 4 shall be applied mutatis mutandis (paragraphs 3 and 4). However, in the case of an application for a status of residence for a permanent resident, the provision for permission for permanent residence under Article 22 shall be applied mutatis mutandis.

5. To stay more than 60 days without obtaining a status of residence in violation of this Article is a cause for deportation (Article 24, item 7) and also constitutes a criminal offense (Article 70,

paragraph 1, item 8).

### **Article 22-3**

This Article provides for the procedures of acquisition of status of residence for those granted landing permission for temporary refuge. For instance, in a case where an alien landing in Japan under permission for temporary refuge wishes to stay in Japan as a long term resident, this Article should be applied. The provision of Article 22-2 is to be applied mutatis mutandis to the application for acquisition of a status of residence, etc., and the application can be filed anytime within the period of landing permission for temporary refuge.

## **SECTION II REQUIREMENTS FOR RESIDENCE**

### **Article 23 Carrying and Presentation of passport or Permit**

1. This Article provides for the duty of aliens to carry a passport or a Certificate of Landing Permission and to show it while they are in Japan. Excluding special permanent residents, soldiers of U.S. armed forces in Japan, civilian war employees, etc., no alien may land or reside in Japan without some kind of permit provided for under this Act, and restrictions may be imposed on activities in Japan according to the status of residence. Also, in the case of permission of provisional landing, permission for landing at port of a call, permission for landing in transit, landing permission for a crewman, landing permission in the event of a disaster or landing permission for temporary refuge, restrictions such as area of movement, route of transit, etc. may be imposed. Therefore, an alien residing in Japan should carry with him his passport or some other type of an official permit and show it upon request by an official with authority so that the Japanese authorities can immediately find out whether the alien's status of residence is lawful, whether the alien is permitted to engage in an activity outside qualifications or whether he violates the conditions attached to his landing or residence permission.

2. As aforementioned, the purpose of this Article is to make it possible to find immediately whether the residence of the person concerned is legal, whether any violation against the conditions attached to the landing permission exists, and so on. Thus, under this provision, a person given a Certificate of Landing Permission on the occasion of landing, i.e., a person who has been given permission for provisional landing, landing permission for a crewman, permission for emergency landing, landing permission in the event of a disaster or landing permission for temporary refuge, should carry such a certificate, and a person without such a certificate should carry a passport. In a case where an alien carries with him a Certificate of Alien Registration, the above-mentioned duty to carry a passport, etc. is exempted because a Certificate of Alien Registration is sufficient for the above-mentioned purpose based on his passport, etc.

3. A violation against paragraph 1 of this Article is subject to a penalty under Article 76, item 1 or Article 77-2, and a violation against paragraph 2 of this Article is also subject to a penalty under Article 76, item 2.

## **Article 24 Deportation**

1. This Article provides that certain classes of undesirable aliens may be deported from Japan according to designated procedures.

Deportation means to force aliens undesirable to a sovereign State to leave its territory under administrative procedures.

Under international law, a sovereign State has complete freedom in deciding whether or not to grant aliens entry into and residence in Japan and under what conditions. However, an alien who was granted entry into Japan and has been lawfully residing in Japan may not be deported without a decision reached in accordance with the law (see Article 13 of International Covenant on Civil and Political Rights).

For the purpose of conducting fair and legitimate immigration control, this Act provides for the classes of aliens to be forced to leave Japan for the sake of our society on specific grounds, while the detailed procedures to be followed are provided for in Chapter 5. Unlike the case of a criminal punishment, whether willfully or by negligence the alien concerned caused the grounds for being deported does not concern a decision of deportation.

A special case of this Article is applicable to a special permanent resident prescribed under the Immigration Control Exemption Law (Article 9 of the said law).

2. Deportation is not applicable to all aliens residing in Japan. A person who has a position with a public organization such as a foreign government or an international institution, for instance, a diplomat, a consul, a staff member of the United Nations, a member of foreign armed forces, etc., is exempt from Article 24. These persons are to be expelled from Japan under different procedures from deportation.

For instance, a diplomat or a consul may be expelled by a notice of a “*persona non grata*” issued to his home country as provided for in Article 9 of the Vienna Convention on the Law of Treaties, which stipulates diplomatic relations between States, and also under Article 23 of the said Convention, which stipulates consular matters. Also, a staff member of a United Nations agency may be expelled by an expulsion request provided for in Article 7, paragraph 25 of the Treaty relating to the Privileges and Exemptions of the United Nations Agencies, and a member of the U.S. armed forces may be expelled by a removal request provided for in Article 9, paragraph 6 of the Japan-U.S. Status-of-Force Agreement.

In respect of a stateless person, there is no State which is obliged to accept the person ultimately. In the reality, however, there are some States to accept such an expelled stateless person, and thus it is not impossible to forcibly send him to the State which accepts him. Thus, there is no reason to exclude a stateless person from the classes of deportable aliens.

3. The classes of deportable aliens provided for in this Article are classified as follows.

3-1. Violation against the immigration control system

(a) Those who illegally entered Japan (related to item 1)

Those who have entered Japan (including the territorial air and water) without possessing a passport or crewman’s pocket-ledger fall under this class. In a case where a person intends to enter Japan without landing permission, etc., even though the person possesses a valid passport, etc., once he enters Japan, this constitutes illegal entry into

Japan (illegal entry with a passport). Neither how he entered Japan nor whether he actually landed in Japan is relevant. Only the fact that he entered Japan in violation of Article 3 suffices as cause for his deportation.

If an alien has entered Japan with someone else's passport, the passport is not valid and thus he constitutes illegal entry into Japan. A forged passport (for instance, in a case where a photo of a different person from the true holder of a passport is sealed on a valid passport, or in a case where the name or date of birth of the true holder of a passport is modified without authorization) is not treated as "a valid passport" (see commentary 1 of Article 3 with regard to "a valid passport").

Also, even if a crewman possesses a crewman's pocket-ledger, unless he is a crewman actually, this constitutes illegal entry.

(b) Those who illegally landed in Japan (related to items 2)

Those who have landed in Japan without obtaining permission for landing, etc. fall under this category, and how they have landed is not relevant. As long as a passenger of an airplane remains within an examination area or any other specified area of the airport for an examination for landing permission or for transit, the passenger is not interpreted to have landed in Japan. Only when he has left such an area, illegal landing is completed (see commentary 4 of Article 9).

"Permission for landing, etc." means "being endorsed by stamping the permission for landing or obtaining landing permission" (Article 3, paragraph 1, item 2). In relation to the above-mentioned, there are two types of aliens who have landed illegally. One is an alien who has landed in Japan without being endorsed by stamping the permission for (general) landing. Since a crewman is not subject to the provision of such general landing permission, illegal landing is applicable only to a non-crewman. The other is an alien who was supposed to obtain so-called special landing permission such as permission for landing at a port of call, permission for landing in transit, landing permission for a crewman, etc. but has landed in Japan without such permission.

c) Those who have engaged in an activity outside qualifications (related to item 4, sub-item (a) In consideration of the provision under Article 19, paragraph 1, which restricts, excluding activities corresponding to each status of residence, "activities involving the management of a business involving income or activities for which he receives remuneration," item 4, sub-item (a) provides that an alien who is clearly found to be engaged solely in such activities in violation of the provision of Article 19, paragraph 1 may be deported as a person engaged in an activity outside qualifications.

"The provision of Article 19, paragraph 1" stipulates the activities which shall not be engaged in by an alien who is a resident under the status of residence specified in the left-hand column of Annexed Table I. An alien who falls under item 4, sub-item (a) is a person who resides in Japan with the status of residence specified in the left-hand column of Annexed Table I.

"Found to be engaged solely in..." refers to a case where an alien is objectively proved, evaluating all factors such as his suspected activity outside qualifications, his actual activities granted under his status of residence, the time and income of these activities, etc., that he has been engaged in an activity outside qualifications to the extent that

seemingly his purpose of residence has been altered.

d) Overstayers (related to item 4, sub-item (b), item 6, item 6-2 and item 7) “Without obtaining an extension or change thereof” in item 4, sub-item means that an alien does not obtain an extension of period of stay, which is provided for in Article 21, or a change of period of stay, which is provided for in Article 20. “Stay in Japan” means that an alien is remaining in Japan beyond the authorized period of stay.

e) Violators against the conditions attached to provisional landing permission (related to item 5)

f) Violators against deportation order (related to item 5-2)

Item 5-2 provides that an alien who has been ordered to leave Japan but does not leave Japan without delay is legally deportable.

“Does not leave Japan without delay “ means a case where an alien does not leave Japan when he has to do so. In a case where an alien is permitted to remain in a designated facility under Article 13-2, as long as the alien remains in the facility during the designated period, the description, “does not leave Japan without delay” is not applicable. However, the alien concerned remains in the facility beyond the designated period, he would be subject to deportation under item 5-2.

g) Those who have aided and abetted illegal entry or illegal landing (related to item 4, sub-item (k))

### 3-2. Those recognized to have a strong anti-social character

(a) Criminals (related to item 4, sub-items (e), (f), (g), (h) and (i))

“Has been sentenced” in sub-items (e), (f), (g) and (i) means that the sentence has been pronounced and finalized by the court (see Commentary of Article 5, paragraph 1, item 4). “Has been convicted” in sub-item (h) means that the alien concerned has a conviction and the conviction has been finalized by the court.

“Laws and ordinances relating to the alien registration” in item 4, sub-item (f) means the Alien Registration Act and the old Alien Registration Order (Imperial Order no. 207 of 1947). If an alien has been sentenced to imprisonment or a heavier penalty for accumulative crimes, i.e., violations of laws and ordinances relating to alien registration and other laws and ordinances, this provision is applicable. However, in a case where an alien is to be punished both in violation of the Alien Registration Act and on a charge relating to another offense, if he may choose fine punishment for the violation of the Alien Registration Act, this provision shall be not applicable.

Item 4, sub-item (g) refers to a case where an alien has been punished for an indeterminate sentence. If a juvenile has been punished with life imprisonment or a determinate sentence for a period of not less than 1 year, even though he is a juvenile, item 4, sub-item (i) is applicable to him. A juvenile, who has been punished for an indeterminate sentence for a period of less than 3 years, is not subject to this item.

(b) Those having engaged in prostitution (related to item 4, sub-item (j))

Not only those who have been sentenced guilty for violating the Anti-

Prostitution Law, etc. but also those who have engaged in prostitution but have not been prosecuted fall under this category.

### 3-3. Those who harm the national order of Japan

Activists who intend to destroy the national order of Japan by means of violence (related to item 4, sub-items (l), (m), and (n))

### 3-4. Those against the interests and public order of Japan

Persons who fall under the provisions protecting the interests and the public order of Japan (related to item 4, sub-item (o))

It is technically impossible to enlist all categories of aliens harmful to the interests and the public order of Japan. Thus, even though an alien has not engaged in any activity described in item 4, sub-items (a) through (n), as long as he has engaged in any activity against the interests or the public order of Japan, he shall be deported under this provision.

The “interests of Japan” is a wide-ranging concept, which includes diplomatic, economic, social, and all other public interests of Japan.

#### <Relevant Decisions by the Courts>

- Deportation is an administrative procedure but not an administrative punishment. Due to the nature of the procedure, whether an alien has become subject to deportation intentionally or in the belief that his behavior is legal is not relevant. As long as the objective fact exists that an alien has entered Japan without a valid passport or crewman’s pocket-ledger, it should be recognized, based on the interpretation of the provisions of Article 24, item 1 and Article 3, that Article 24, item 1 is applicable to the alien concerned. (September 14, 1995, Fukuoka District Court)

- Deportation of an alien under a written deportation order does not violate Article 9 of the Universal Declaration of Human Rights, and Articles 9 and 13 of the International Covenant on Civil and Political Rights. (July 18, 1986, Osaka Higher Court)

- Under Article 24, item 4, sub-item (o), even though an alien does not fall under any sub-items (a) through (n), if the Minister of Justice has recognized that the alien has engaged in activities which would harm the interests or the public order of Japan, the alien shall be subject to deportation. Thus, it is natural that an alien who falls under any sub-items (a) through (n) shall be also subject to deportation. (July 28, 1970, Nagoya District Court)

- Under international customary law, any sovereign State is not obliged to accept an alien, and has the freedom to decide whether to accept an alien inside its territory and may stipulate the conditions to accept an alien and on the deportation procedures for illegal entrants, unless there exists some special treaty. It should be interpreted that this customary law does not contradict the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Japanese Constitution. Only the procedures of deportation and the method concern the provisions of the above-mentioned laws. On the other hand, the Universal Declaration of Human Rights constitutes a recommendation but is not legally binding, and the preamble of the Japanese Constitution does not necessarily provide for substantial judicial standards relating to the effects of administrative procedures.

Next, it is possible to recognize that the plaintiffs entered Japan illegally knowing that such an illegal entry violates our law and, if found, that such an illegal entrant shall be deported. It is merely a fortuity that the plaintiffs were able to continue to stay in Japan for more than 10 years without any legal punishment. The plaintiffs have been illegally remaining in Japan during this period and have never been entitled to any legal protection. Therefore, even though their stay in Japan has been suspended, it can be said that this is what they could have expected initially and should accept. On these accounts, it can be never recognized that the suspension of their stay in Japan would cause immeasurable pain and damage to them. Also, it cannot be interpreted directly that the above-mentioned two dispositions will cause consequences against the plaintiff's individual dignity and the right to the pursuit of happiness, which are guaranteed under Article 13 of the Japanese Constitution. (July 18, 1986, Osaka Higher Court)

## **SECTION III DEPARTURE**

### **Article 25 Procedure for Departure**

This Article provides for the procedures of departure of an alien. The confirmation of departure by an immigration inspector is not permission of exit per se but a procedure to confirm the fact of departure of each alien for the purpose of fair and legitimate immigration control.

2. Departure is the opposite concept to entry (Article 3), and means departure from Japan's territory (including territorial waters and air). A person whose departure must be confirmed under this Article is, excluding a crewman (paragraph 1), an alien who does not merely depart from Japan's territory but desires to depart from Japan "with the intention to proceed to an area outside of Japan." "An area outside of Japan" does not have to be an overseas sovereign State, and includes a land belonging to no State such as Antarctica. However, the high seas or territorial waters of a foreign State are not included. "The intention" to proceed to an area outside of Japan should be judged not only from a statement by the alien concerned but also from all other circumstances such as the destination of a vessel, etc. which he is on board, possession of a passport, etc. The reason why a crewman is excluded from this Article is due to the special nature of a crewman who moves with a vessel, etc. under the supervision of a captain of a vessel, etc. It is understood that confirmation of a crewman's departure from Japan can be made by requesting a captain of a vessel, etc. to submit a list of crew members and other various reports (Article 57), and that it is thus not necessary to confirm each crewman's departure.

3. The concrete method of confirmation of departure is provided for in Article 27, paragraph 2 of the Regulation under the Act; in a case where the alien concerned has a passport an immigration inspector as a rule affixes in the passport a departure stamp, which is Annexed form no. 38 of the Regulation under the Act. On the other hand, an alien who has landed in Japan with issuance of a landing permit such as emergency landing permission (Article 17), landing permission in the event of a disaster (Article 18) or landing permission for temporary refuge (Article 18-2) should surrender the certificate of landing permission to an immigration inspector.

4. When an alien has left Japan with an intention to proceed to an area outside of Japan, he is not subject to our immigration control anymore because he does not reside in Japan. Thus, his residential status and the period of stay given by the effect of special landing permission or fair and legitimate immigration control, and also the legal status of a special permanent resident



under the Immigration Control Exemption Law are to be lost by his departure from Japan. However, if an alien departs from Japan with re-entry permission and re-enters Japan before the permission expires, or if an alien departs from Japan with a Refugee Travel Document and enters Japan before the document expires, his residential status shall be maintained.

A violation against the procedures of departure under this Article shall be punished (Article 71).

#### <Relevant Decisions by the Courts>

- The provision of Article 25 of the Immigration Control Order is applicable both to aliens who landed and reside in Japan legally and to aliens who landed in Japan illegally. (July 9, 1957, Supreme Court)

- The provision of Article 25 of the Immigration Control Order does not legally restrict the departure itself. It merely provides the procedures to be followed. Even if such procedures may have the effect of restricting the freedom of the travel, these procedures are established for the purpose of conducting fair and legitimate immigration control for the public welfare and therefore they do not violate against Article 22, paragraph 2 of the Constitution. (December 25, 1957, Supreme Court)

- To apply the provisions of Article 25, paragraph 2 and Article 71 of the Immigration Control Order to a Korean resident in Japan does not violate Articles 14, 22 or 31 of the Constitution. (April 27, 1978, Osaka Higher Court)

### **Article 25-2 Deferment of Confirmation of Departure**

This Article provides for deferment of confirmation of departure. Under this Article, the departure procedures may be deferred to give a certain time for the organizations concerned to take necessary measures. The purposes of this Article are to prevent free departure of an alien who is under prosecution on a charge of an important crime, who has been issued an arrest warrant, who has not completed his term of imprisonment or who shall be extradited under the Law of Extradition, and thus to ensure that the criminal justice system functions effectively in Japan. Under the procedure of deferment of confirmation of departure, if an immigration inspector has already been notified by the organization concerned, he may defer the confirmation of departure of the alien concerned only for 24 hours and then shall inform the organization concerned of the deferment. However, this procedure is not for an immigration inspector to hold and deliver the alien concerned to the judicial authorities. Since deferment of confirmation of departure should not exceed 24 hours, if an alien, who was deferred the confirmation of departure, reappears at the same port of entry or departure 24 hours after the first deferment, an immigration inspector may no longer defer the confirmation of the alien's departure.

### **Article 26 Re-entry Permission**

1. Re-entry permission is intended to facilitate the re-entry procedures for an alien resident wishing to come back to Japan after temporary absence, and the Minister of Justice grants an alien such re-entry permission.

Once an alien has left Japan, the effect of landing permission, a residential status and the period of stay attached to the alien concerned, or a residential status of a special permanent resident is to be lost. Therefore, if an alien desires to re-enter and reside in Japan after having left Japan, he must obtain a new visa and be newly examined for a status of residence and period of stay through the landing permission procedures prior to his re-entry to Japan. However, if he desires to continue to reside with the same status of residence after a temporary absence from Japan, it is too inconvenient to request the alien concerned to take wholly new procedures, in terms of the benefit of the alien concerned as well as of administrative efficiency. Thus, this Act institutionalizes re-entry permission. The holder of re-entry permission is not required to have a visa (proviso of Article 6, paragraph 1) or to have a status of residence and a period of stay decided at the port of entry (proviso of Article 9, paragraph 3), because his residence in Japan is assumed to be continuing.

2. Re-entry permission does not guarantee being granted landing permission. Even though an alien is granted re-entry permission, in a case where the alien concerned has been found to fall under one of the items for denial of landing permission (Article 5), excluding a special permanent resident, the alien concerned shall not be granted landing permission (see the parenthesized statement of Article 7, paragraph 1). However, even in this case, such an alien may be granted special landing permission by the Minister of Justice.

3. From the nature of re-entry permission as mentioned above, those who may be able to avail themselves of this permission are persons who have been staying in Japan for a considerable length of time. Thus, those who are given provisional landing permission which is still part of the landing procedures (Article 13), landing permission at a port of call where the period of stay is very short due to the nature of the permission (Article 14), landing permission in transit (Article 15), landing permission for a crewman (Article 16), permission for emergency landing (Article 17) or landing permission in the event of a disaster (Article 18) cannot be given re-entry permission (the parenthesized statement of the first part in paragraph 1).

Besides the holders of a status of residence under this Act, this Article is available for a special permanent resident under the Immigration Control Exemption Law. A person granted landing permission for temporary refuge (Article 18-2) may also be given re-entry permission. Many of those who were granted landing permission for temporary refuge are expected to have to stay in Japan for a relatively long period of time. It is also predicted that while they are staying in Japan they may visit a third country for resettlement and then need to return to Japan. Thus, re-entry permission is available for an alien granted landing permission for temporary refuge.

4. In principle, re-entry permission is valid only for single use. However, in consideration of convenience for those who need enter and depart from Japan frequently, such as a diplomat, a traveler on official business, the press, a crewman of an overseas flight, a business man, etc., multiple re-entry permission may be granted (see the latter part of paragraph 1).

5. Re-entry permission is usually shown by stamping to that effect in the passport. If the person concerned is unable to obtain a passport in the case of a stateless person, etc., a re-entry permit would be issued (paragraph 2). A re-entry permit shall be considered as a passport limited in use to entrance into Japan (paragraph 7), and it is not originally intended to be used as a travel document like a passport. Also, unlike a Refugee Travel Document, since a re-entry permit does not function as a passport for an alien, the permit itself can not naturally be used for diplomatic protection. In addition, even though some countries do not accept the permit as a travel document,

each government is given the freedom to decide how to handle such a permit.

6. The period of the validity of re-entry permission is to be decided within 3 years from the date of issuance of the permission (paragraph 3). However, from the nature of the re-entry permission procedures, it is natural that the period of the validity of re-entry permission shall not exceed the period of stay stipulated in a status of residence for an alien (in the case of an alien whose period of stay is not determined, for instance, a person granted landing permission for temporary refuge, re-entry permission shall not exceed the period of stay for which he is permitted to stay in Japan).

In respect of a special permanent resident under the Immigration Control Exemption Law, an exception of the period of the validity of re-entry permission is provided for, and the period of the validity is to be determined, not exceeding 4 years from the date of issuance of the permission (Article 10 of the Immigration Control Exemption Law).

In a case where the holder of re-entry permission has not re-entered Japan within the valid period, the re-entry permission becomes invalid. Paragraph 4 provides for the procedure for an extension of validity of re-entry permission. Under this procedure, if it is recognized that there are reasonable grounds for an alien, who departed from Japan with re-entry permission, to be unable to re-enter Japan within the valid period, for instance, (1) the alien concerned cannot travel due to sickness, injuries, etc., (2) there is no transportation means to re-enter Japan within the valid period, (3) the alien concerned has to continue to study abroad, etc., an extension of re-entry permission may be granted. The purpose of this procedure is to support an alien who cannot re-enter Japan within the valid period due to unavoidable reasons so that the alien concerned would not lose his residential status (for instance, a status of residence of a permanent resident). There is no specific provision on how many times an extension of re-entry permission may be granted, but the period of an extension cannot exceed 1 year from the date of the extension or 4 years from the date of issuance of the original re-entry permission (5 years for a special permanent resident). Also, re-entry permission may be granted only when an alien, who is residing in Japan and is to depart from Japan with the intention of re-entering Japan prior to the date of expiration of his period of stay, applies for the permission (paragraph 1). Therefore, an extension of re-entry permission shall not be granted beyond the period of stay stipulated in the status of residence attached to the alien concerned. While an extension of re-entry permission granted by the Minister of Justice is to be described in a passport or a re-entry permit, the administrative procedures of an extension of re-entry permission are to be taken overseas and therefore the procedures are entrusted to Japanese consular officers, etc. (Article 5). Thus, the application for an extension of the validity of re-entry permission is to be filed at Japanese embassies or consulates.

7. Paragraph 6 provides that during the valid period of re-entry permission if it has been found inappropriate to grant further multiple re-entry permission to the alien concerned the permission may be revoked. However, the revocation cannot be made while the alien concerned is outside Japan, and only while he is in Japan after having re-entered Japan should be possible. This is due to the consideration that the alien concerned would not immediately lose his residential status, etc. by having his re-entry permission revoked and thus being unable to re-enter Japan.

<Relevant Decisions by the Courts>

- Re-entry permission is up to the discretion of the Minister of Justice. In a case where there is a

good reason to withdraw the permission, the Minister of Justice may do so ex officio, even though there is not an explicit text to this effect.

However, if the Minister of Justice may wish to withdraw the re-entry permission by his discretion, he must explicitly indicate the conditions to be observed and notify that disobedience to the conditions attached to the permission may cause the cancellation of the permission. (December 14, 1960, Tokyo District Court)

- Re-entry Permission is permission only enabling an alien resident to re-enter Japan with the same status as he has previously enjoyed. Therefore, it does not confer a new status of residence. (December 23, 1965, Supreme Court)

- In a case where an alien has been denied re-entry permission and has departed from Japan without re-entry permission, it is reasonable to understand that the alien concerned has lost the benefit of his lawsuit to seek the revocation of having been denied re-entry permission. In this case, even though the denial of re-entry permission has been revoked, because the said person already lost his status of residence, there is no room to permit him to re-enter Japan. Therefore, it should be understood that the said person loses his legal benefit that is recoverable by the denial of re-entry permission being revoked. This principle is exactly applicable to a Korean permanent resident, who has been residing in Japan according to Article 1 of the Special Immigration Control Law under the agreement between Japan and the Republic of Korea on the legal status and treatment of the Korean residents in Japan. (April 10, 1992, Supreme Court)

- Unlike our own citizens, an alien shall not be given an absolute guarantee of re-entry, and it is natural that our country imposes some restrictions on the re-entry on an alien under laws and ordinances. Thus, it should not be understood that the restrictions of re-entry, in themselves, which are provided for in Article 26 of the Immigration Control Order, violate the Constitution and thus have no validity. (November 14, 1974, Supreme Court)

- The permission of permanent residence under the agreement between Japan the Republic of Korea on the legal status and treatment of Korean residents in Japan is one of the forms of a status of residence under Article 4 of the Immigration Control Order. Therefore, a Korean with such permission who has not re-entered Japan within the validity of re-entry permission should lose his status exactly as any other person will lose his former status of residence by not re-entering Japan within the validity of re-entry permission. (July 11, 1978, Osaka District Court)

- An application form of re-entry permission is an official document, and since re-entry permission is to be granted on the premise that the applicant would reside in Japan legally, it is necessary as well as essential to confirm the status and eligibility of the applicant in the process of the examination for re-entry permission. Therefore, from the nature of the examination, it can be said that the applicant is naturally required to fill in the application form with his real name. (February 17, 1984, Supreme Court)

- Overseas travel differs in nature between Japanese citizens and aliens. There are no grounds to interpret that the provisions of Article 22, paragraph 2 of the Constitution and the provisions of Article 12, paragraph 4 of the International Covenant on Civil and Political Rights particularly guarantee the freedom of aliens' overseas travel, in other words, the freedom of re-entry is a difference between a country's own citizens and aliens.

The real purpose of re-entry permission is in lieu of visa, and the decision of granting re-entry permission is up to the wide discretion of the Minister of Justice, who is responsible for

immigration control administration. Thus, even though he decided to deny re-entry permission on the grounds that the applicant for re-entry permission refused fingerprinting, it cannot be said that his decision is extremely inappropriate in light of the common ideas of the society. (March 26, 1986, Tokyo District Court)

- An alien who resides in Japan is not guaranteed, under the Constitution, the freedom to travel overseas temporarily. (November 16, 1992, Supreme Court)

- The immigration control administration is generally interpreted as a domestic matter under international law, and requirements for aliens' entrance are exclusively entrusted to each State's legislative policy. Under the Immigration Control and Refugee Recognition Act in Japan, only if an alien has departed from Japan in the possession of re-entry permission, may he re-enter Japan without losing the status of residence which he has been holding in Japan. Although Article 26, paragraph 1 of the said Act does not particularly provide for the requirements for re-entry permission, this is because the decision on granting re-entry permission is entrusted to the wide discretion of the Minister of Justice. When the Minister of Justice receives an application for re-entry permission, from the viewpoint of maintaining our national interests as well as fair and legitimate immigration control, taking into consideration the residential record of the applicant, the purpose of the applicant's departure from Japan, the necessity of the departure, the relationship between the country where the applicant would visit and Japan, the current situations at home and overseas and all other relevant circumstances, he shall make the decision to grant re-entry permission. Unless the decision relies on the discretion of the Minister of Justice, who is in charge of the immigration control administration, it would be impossible, due to the nature of the re-entry permission procedures, to expect an appropriate decision. (April 10, 1998, Supreme Court)

## **CHAPTER V PROCEDURES FOR DEPORTATION**

### **SECTION I INVESTIGATION OF VIOLATIONS**

#### **Article 27 Investigation of Violations**

1. This Article through Article 38 provide for an investigation of violation, which is the first step of the deportation procedures. An investigation of violation means the investigation conducted by an immigration control officer concerning the cases of violation of laws or regulations for entrance, landing or residence of aliens (Article 2, item 14). When an immigration control officer finds an alien whom he believes comes under any one of the deportable causes, he is to find and hold the alien concerned, and at the same time to collect supporting information to prove the fact of the violation.

2. "An alien whom he believes comes under any of the items of Article 24" means that an alien is suspected to fall under one of the deportable causes. The process by which an immigration control officer has come by such a suspicion does not matter. His understanding of the circumstances, information from any public organ or any other person (Article 62), the suspect's statement, etc. is enough to seek the evidence. An immigration control officer does not need to provide supporting materials to confirm the suspicion.

"An immigration Control Officer may conduct an investigation into any violations" means that

an immigration control officer is empowered to make such an investigation.

### **Article 28 Necessary Inquiries and Information for Investigation of Violations**

1. This Article provides for the method of an investigation of violations. The method can be classified as either a voluntary or compulsory one, however, the voluntary investigation should be prioritized in principle, and the compulsory investigation can be done only when such a method is authorized in this Act (paragraph 1).

A compulsory investigation is an investigation under a compulsory disposition, and a compulsory disposition means the action to seek the result deemed necessary by an immigration control officer with direct and official enforcement, regardless of the intention of the person investigated. Inspection, Search and Seizure under Article 31, Necessary Actions under Article 32, Prohibition of Entry and Exit under Article 36 and Detention under Articles 39 and 43 are the compulsory actions provided for in this Act.

A voluntary investigation means an investigation conducted without recourse to the above-mentioned compulsory dispositions. Inquires under paragraph 2 of this Article, an investigation of a suspect under Article 29 and an investigation of a witness under Article 30, a proof submitted voluntarily or retention of a proof is an example of a voluntary investigation. Besides the investigation methods provided for under this Act, it is understood that an investigation shall be approved if the investigation is to be conducted with the consent of the person investigated and also in accordance with common social ideas and with public policy.

2. “Public offices” in paragraph 2 means any public organization where the public official or any other person with public duty performs his function. It does not mean a mere physical place but an institutional public office or other organizational entity. “Public or private organization” is not restricted to being a corporate entity.

### **Article 29 Request of Appearance and Investigation of a Suspect**

This Article provides, as one of the methods of investigation of violation, that an immigration control officer may request the appearance of the suspect and question him. However, this method must remain voluntary in nature and does not have enforcement. Therefore, refusal against such a request does not meet any criminal charge, but as long as a suspect consents, an immigration control officer may conduct the investigation of violation including an examination of the articles or documents which the suspect owns.

### **Article 30 Request of Appearance of Witness**

This Article provides for, as one of the methods of voluntary investigation, questioning a witness. A witness in this Article means any person other than the suspect who knows or is supposed to know information relevant to the suspicion concerned. Refusal of appearance or reply to a question by a witness under this Article, unlike in the case of such refusal by a witness under Article 10, paragraph 5, or Article 48, paragraph 5 (a witness whom a special inquiry officer requests for appearance in the process of the landing examination procedures or the deportation

procedures), does not meet any criminal charge.

### Article 31 Inspection, Search and Seizure

1. This Article provides for, as one of the methods of compulsory investigation, inspection, search and seizure.

“Inspection” means an action to inspect the scene and to recognize the existence or absence of the article or place concerned by way of the five senses or instinctively?.

“Search” means an action to take necessary measures in respect of a certain place to find the article concerned. A human body is a kind of such a place.

“Seizure” means an action to get possession of the article concerned.

2. An inspection, search and seizure must be conducted with the approval of the court (the policy of warrant). While an action such as an inspection, etc. is taken as an administrative investigation, given that such an investigation is conducted against the rights to privacy and to peace of dwelling, etc., it is provided that a judge’s warrant for such an investigation must be issued in consideration of the provision of Article 35 of the Constitution, which guarantees non-trespassing in a dwelling. On the other hand, in a place irrelevant to the provision for non-trespassing of a dwelling such as on a public road, on the beach or open-air place, an immigration control officer may conduct, as a voluntary investigation, an inspection, search and seizure of the articles voluntarily submitted by a suspect or a witness, as long as the investigation of violation is necessary.

3. An application for the approval of an inspection, etc. should be made with a request form for a warrant, which is Annexed form no. 46 of the Regulation under the Act (paragraph 3 and Article 31, paragraph 1 of the Regulation under the Act). When a judge receives a legitimate application, he must issue the warrant to the immigration control officer (paragraph 4). According to the text of paragraph 4, whenever a judge receives a legitimate application which meets the conditions stipulated in paragraph 3, he must issue a warrant without fail. It is understood that he may not withhold the issuance of a warrant by judging its necessity, etc.

### Article 32 Necessary Actions

“Remove locks” and “open seals” are merely illustrations of the actions which might take place. Any other actions necessary for the purpose of an inspection or seizure could be broadly taken, as long as the manners and the methods are in conformity with public order and standards of decency as well as socially reasonable.

### Article 33 Carrying of Identification Card

The identification card of an immigration control officer is provided for, pursuant to the provision of Article 61-5, paragraph 3, by the Ministerial Ordinance on the Forms of Identification Card of the Immigration Inspector and the Immigration Control Officer.

### **Article 34 Attendance at Search or Seizure**

1. Attendance under this Article is to properly protect the rights of the person subject to the search or seizure as well as to guarantee the proper procedures.
2. “If it is impracticable” (to ensure such a person is present) means the case where the person to be present is absent or refuses to be present. “A dwelling” in this Article, Article 31, paragraph 3 and Article 35 includes a cabin where a crewman lives and also a facility attached to the cabin.

### **Article 35 Restriction on Hours**

1. The purpose of this Article is to protect peaceful privacy at night. It is appropriate to consider that “before sunrise or after sunset” should be decided according to a calendar.
2. Paragraph 3 provides for the exception from restrictions on hours; Any place considered to be commonly used for acts prejudicial to public morals or a hotel, restaurant or any other place which the public can use even at night may be inspected and searched even after sunset (however, in respect of a hotel or restaurant, only during their opening hours). This is because there is no concern about harming privacy at these places at night. “Any place considered to be commonly used for acts prejudicial to public morals” is, for instance, a place used for gambling.

### **Article 36 Prohibition of Entry and Exit**

This Article intends to preserve proper and smooth enforcement of the function conducted by an immigration control officer. Despite this Article, however, an immigration control officer cannot prohibit the entry and exit of the person who should be present at the site of a search or seizure under Article 34.

### **Article 37 Procedures for Seizure**

This Article provides for the procedures of a seizure as a part of compulsory investigation. However, even if a suspect or a witness has voluntarily submitted an article and the article has been seized (instead of a seizure, this case is practically called “retention”), the article submitted shall not be returned until there is no need to retain it for the investigation of violation. In this sense, a similar effect as a compulsory seizure arises. Thus, this Article is available to be applied *mutatis mutandis*.

### **Article 38 Preparation of Record**

This Article provides for the preparation of a record by an immigration control officer, and for the reading of as well as signing of the record by a person required to be present when an immigration control officer has conducted an inspection, search or seizure.



## SECTION II DETENTION

### Article 39 Detention

1. This Article through Article 44 provides for detention in the deportation procedures.

Detention is classified into two forms; one is the detention under a written detention order issued by a supervising immigration inspector (paragraph 1 of this Article), and the other is the detention before the issuance of a written detention order and where a supervising immigration inspector is requested to issue the written detention order after the detention (Article 43, paragraph 1). In practice, the first is called “ordinary detention” and the latter is called “emergency detention”. In principle, detention should take place as the form of ordinary detention, and emergency detention is an exceptional case. In both cases, detention is enforced by an immigration control officer.

2. “If he has reasonable grounds to suspect” in paragraph 1 does not mean personal suspicions by an immigration control officer. Reasonable as well as objective grounds to justify the suspicion concerned must exist. In this sense, it differs from the initiation of an investigation of violation in which the procedure would be begun if an immigration control officer “believes (under Article 27)” that an alien comes under any one of the deportable causes, that is, only if suspicion enough exists to enable an immigration control officer to presume the fact of violation.

“An immigration control officer may detain” means that he is empowered to detain.

3. A written detention order shall be issued by a supervising immigration inspector of each district office (paragraph 2) upon application by an immigration control officer. A supervising immigration inspector decides whether or not to issue a written detention order, judging whether or not reasonable grounds to justify the suspicion that the person concerned falls under one of the deportable causes exist from the supporting materials attached to the request of issuance of the written detention order.

4. There is no explicit text with regard to whether or not to detain all suspects in order to proceed with the deportation procedures. However, due to the following reasons, it is understood that the so-called prepositional detention policy (detention-comes-first-policy) is adopted.

4-1. This Act provides for Articles 44 and 45 to connect the procedures for an investigation of violation with the procedures for an examination of violation. Article 44 provides that an immigration control officer shall deliver a detained suspect to an immigration inspector together with the record and evidence within 48 hours from the time he places the suspect under physical restraint. Following this Article, Article 45 provides that “an immigration inspector shall, when a suspect has been delivered to him pursuant to the provision of the preceding article, promptly examine...” However, unlike Article 246 of the Code of Criminal Procedure, there exists no provision to deliver the case of violation to an immigration inspector (or to have him take over the case) with the suspect not under physical restraint (or with the suspect at home).

Since delivery of a case of violation is an extremely important process in the entire deportation procedure, if this Act approves the delivery (or take-over) of a case of violation with the suspect not under physical restraint (or with the suspect at home), which is the so-called “procedure of delivery at home”, such a provision should have been stipulated. Nevertheless, given the fact that there is no such provision, it is safe to say that it convincingly indicates that the

detention-comes-first policy is adopted.

4-2. Article 47, paragraph 1 provides that an immigration inspector must release a suspect immediately after he has found as a result of an examination that the suspect does not fall under any one of the deportable causes. This provision should inevitably be interpreted to be presupposing that all suspects are detained. Otherwise, if this Act approves the procedure of delivery at home, the said Article should have been provided that “when a suspect is detained, the person should be immediately released.”

4-3. Article 48, paragraph 3 provides that a special inquiry officer shall, when a request is made for a hearing, notify a suspect of the time and place of the hearing and conduct the hearing without delay. Although a special inquiry officer should make sure to conduct a hearing face to face with a suspect, there is no provision to request for the appearance. In respect of an investigation of violation, as Article 29, paragraph 1 provides that “an immigration control officer may, in case it is necessary to conduct an investigation into any violations, request the appearance of a suspect and question him,” this provision presupposes that there may be a case where a suspect is not under physical restraint. On the other hand, given the fact that there is no provision to request for the appearance of a suspect for a hearing, it is understandable that all suspects are detained at the time of a hearing.

4-4. Article 48, paragraph 6 provides that if a special inquiry officer has found, as a result of a hearing, that the findings by an immigration inspector are not supported by factual evidence, he shall immediately release the person concerned. As mentioned above in 4-2, this provision is also interpreted to presuppose that all suspects are detained at the time of a hearing. If a hearing takes place with the suspect not under physical restraint, the said Article should have provided that “when a suspect is detained, the person should be immediately released.”

4-5. Article 63, paragraph 1 provides that in a case where an action according to laws and ordinances relating to the criminal suit or to enforcement, etc. is carried out, “even when the person is not detained”, the action for deportation may be taken against him. “Even when the person is not detained” means “even when the person is not detained according to a written detention order,” and this expression presupposes that all suspects, excluding those who fall under the provision of Article 63, paragraph 1, should be detained. Thus, this expression can be interpreted to support the detention-comes-first policy under which all suspects should be under physical restraint at the time of delivery of a suspect.

<Relevant Decision by the Court>

- The detention procedure under the Immigration Control Order does not contravene Articles 31 and 34 of the Constitution. (April 15, 1972, Tokyo Higher Court)

#### **Article 40 Form of Written Detention Order**

1. In a written detention order, in addition to the name, place of residence, nationality of a suspect, summary of the suspected offense, place of detention, effective period and date of issuance of the order, pursuant to the Annexed form no. 50 of Article 35 of the Regulation under the Act, number of the order, the occupation, sex, and date of birth of the suspect are to be entered. Also, a

supervising immigration inspector shall sign his name and affix his seal thereto.

Concerning the identification matters of the suspect such as the name, date of birth, place of residence, occupation and so on, as long as those matters are clear enough to identify the suspect as a whole, the validity of the written detention order is not lost.

2. In issuing a written detention order, a supervising immigration inspector must specify the place of detention among the facilities stipulated in Article 41, paragraph 2.

3. There are no rules on the effective period of a written detention order under this Act, however, in practice a supervising immigration inspector specifies 10 days.

The effective period of the order is the period during which an immigration control officer may execute the order. If the period is over without the enforcement of detention by an immigration control officer, the validity of the order will be lost. Since an extension or renewal of a written detention order is not permitted, in a case where an immigration control officer intends to detain the person after the effective period is over, he needs to request for the issuance of a new written detention order.

<Relevant Decision by the Court>

- In a case where a written detention order was issued to mother and her eldest daughter and, in respect of the mother, all the items stipulated by Article 40 of the Immigration Control Order were entered in the order, even if some items like nationality, place of residence and the essential facts of the suspected offense were not entered in respect of her daughter, the written detention order was still valid to her daughter because those items were easily found out from the descriptions relating to the mother in the order. (February 24, 1958, Tokyo Higher Court)

#### **Article 41 Period and Place of Detention and Entrusting of Custody**

1. Period of detention means the period during which an immigration control officer may detain a suspect. During this period which the suspect is under physical restraint, all the deportation procedures including an investigation of violation, a hearing, a decision by the Minister of Justice and issuance of a written deportation order are proceeded and completed without delay.

The period of detention should be counted from the time when an immigration control officer enforces a written detention order and holds a suspect, but not when a suspect is detained at a detention place after being held. The first day should be counted as one full day. Even if all procedures of deportation have not finished within 60 days at maximum, no further detention is authorized. In this connection, it should be noted that the duration during which a suspect is temporarily released (Article 54) is not counted toward the period of detention.

2. As to place of detention, in addition to immigration detention centers and detention facilities, facilities which the Minister of Justice or a supervising immigration inspector entrusted by the Minister designate can be used as such. So far, pursuant to the Places of Detention according to a Written Detention Order or a Written Deportation Order under the Immigration Control and Refugee Recognition Act (Public Notice no. 368 of 1953 of the Ministry of Justice), (1) a hospital, a clinic and a midwife clinic under the Medical Act, (2) a quarantine office, (3) a police

station and (4) the vessel, etc. on which a suspect was aboard, are designated.

### **Article 42 Procedures for Detention**

1. An immigration control officer must show a written detention order to a suspect prior to detention (paragraph 1). This is to notify the suspect that detention is taking place in accord with the due process of law and also to let him prepare at his earliest convenience for explanation and defense of his case by notifying him of the reasons for the detention.

2. Paragraph 2 provides for an exception from the rule provided for in paragraph 1 in the case of emergency. Although a written detention order must be shown to a suspect as a rule, in a case where an immigration control officer does not happen to possess the order even though he has found the suspect, he may not be able to hold the suspect. Since this situation should be avoided in terms of the administrative effectiveness, this Act approves this exception of this rule. However, this exception is applicable only to the case in which a written detention order has been issued. The order itself is to be shown later. In this sense, this is still ordinary detention and thus should be clearly differentiated from emergency detention provided for in Article 43, which means detention of a suspect without waiting for the issuance of a written detention order.

<Relevant Decision by the Court>

- Article 34 of the Constitution is only applicable to detention in the criminal procedures and is not applicable to the detention and examination procedures under a written detention order for immigration control, which is part of the administrative process. (November 26, 1975, Tokyo Higher Court)

### **Article 43 Emergency Cases**

1. This Article provides for, as an exception to the rule in Article 39, emergency detention which an immigration control officer may, without a written detention order, detain a suspect who “apparently” comes under one of the deportable causes and where “there are reasonable grounds to believe that the suspect is likely to escape before the issuance of the written detention order”.

2. The conditions for emergency detention are; (1) a person apparently coming under one of the deportable causes is present, (2) there exists an imminent situation where a suspect “is likely to escape before the issuance of a written detention order, and (3) an immigration control officer finds that “there are reasonable grounds to believe so.” All these three conditions are necessary for emergency detention, and if one of the conditions is lacking, the execution of emergency detention is not permitted. While the conditions for ordinary detention provide that “there are reasonable grounds to suspect that a person comes under any one of the items of Article 24,” the conditions for emergency detention provide that “there are reasonable grounds to believe that a person apparently coming under one of the items of Article 24...,” that is, more evidence that the person comes under one of the deportable causes is necessary for emergency detention. Whether the person comes under one of the deportable causes is firstly to be judged by an immigration control officer, but a supervising immigration inspector newly examines and judges the case

when he later receives the request for the issuance of a written detention order. “Reasonable grounds to believe that a person is likely to escape before the issuance of a written detention order” are to be judged by the existence or not of concrete and objective reasons to believe he is likely to escape, in consideration of his behavior, residence, the fact of the suspicion and so on.

3. When an immigration control officer has enforced emergency detention, he must report the reasons for the detention to a supervising immigration inspector and request the issuance of a written detention order (paragraph 2). The supervising immigration inspector to whom the report and request were made should examine promptly whether or not the case meets the conditions for emergency detention and if he judges so he shall issue the order. The issuance of a written detention order ascertains the legality of the detention concerned, and gives emergency detention the same validity as ordinary detention.

If a supervising immigration inspector has judged that the case does not meet the conditions for emergency detention, he shall decide not to issue the order. In this case, the immigration control officer may not continue to detain the suspect and must release him immediately (paragraph 3).

4. Although there is no explicit text in this Article, in accordance with the provision of Article 42, in a case where an immigration control officer enforces emergency detention, he must notify a suspect of the fact of the suspicion. Also, when a written detention order has been issued, the immigration control officer must show the order to the suspect immediately.

#### **Article 44 Delivery of the Suspect**

1. Delivery of a suspect makes a change from an investigation of violation by an immigration control officer to an examination by an immigration inspector.

Once an immigration control officer detains a suspect, he is not authorized to release the suspect on his own judgment and must deliver the suspect to an immigration inspector. This is because an immigration inspector must decide immediately whether the suspect falls under one of the deportable causes or not.

2. While this Article directly provides for the cases of ordinary detention, which are stipulated in Article 39, paragraph 1, given the fact that emergency detention has the same legal effect as that of ordinary detention if the written detention order is issued after the detention, the maximum time for delivery is the same as that of ordinary detention, 48 hours after holding the suspect.

During the 48 hours, an immigration control officer should conduct the necessary investigation, file the supporting materials and prepare for delivery of the suspect to an immigration inspector, so that an immigration inspector can start to examine the suspect immediately after the detention.

3. As seen from this Article, it is the rule that the deportation procedures shall proceed with delivery of a suspect from an immigration control officer to an immigration inspector after having each suspect detained. However, according to the provision of Article 63, paragraph 1, in a case where a suspect is also under the criminal procedures, the deportation procedures shall proceed without detaining him as an exceptional case. On such an occasion, instead of the delivery of the suspect, the case is “taken over” from an immigration control officer by an immigration inspector with the transfer of the supporting materials and evidences.

## SECTION III EXAMINATION, HEARING AND FILING OF OBJECTION

### Article 45 Examination by Immigration Inspector

1. This Article through Article 47 provide for an examination by an immigration inspector. The examination provided for in this Article begins at the point of delivery of a suspect with the record and evidences of the case from an immigration control officer to an immigration inspector, and examines, as the so-called first trial, whether the suspect falls under any one of the items of the deportable causes stipulated in Article 24.

2. This examination is to be conducted based on the record and evidences of the case, which were prepared by an immigration control officer. Unlike an investigation of violation by an immigration control officer, an examination by an immigration inspector does not have specific provisions with regard to due actions. However, if necessary, an immigration inspector may not only conduct a hearing with a suspect but also see a witness as well as request a public office for supporting materials, etc.

<Relevant Decision by the Court>

- There is no provision for the period of making a decision by the Minister of Justice under the Immigration Control Order. In addition, the provisions of Article 45, paragraph 1, Article 47, paragraph 2, Article 48, paragraph 3 and Article 49, paragraph 5 are all directory provisions. Therefore, even if there occurs a violation against these provisions, the Minister's findings as well as judgment do not constitute illegality. (May 29, 1958, Tokyo District Court)

### Article 46 Burden of Proof on a Suspect

This Article provides that a person under the suspicion of illegal entry or landing must prove by himself that he did not illegally enter or land in Japan. While the proof of a positive fact, for instance, the fact that the suspect "did" illegally enter or land in Japan, is relatively easy, the proof of a negative fact, for instance, the fact that the suspect "did not" illegally enter or land in Japan is difficult. Thus, from the viewpoint of sharing the burden of proof, this Article provides for the rule of burden of proof on a suspect. In other words, it is difficult, and also extremely inefficient in terms of administrative budget for an immigration control officer or an immigration inspector to prove; (1) that the suspect falling under Article 24, item 1 is not in the possession of a valid passport or crewman's pocket-ledger (illegal entry without a passport), (2) that the suspect falling under Article 24, item 2 does not have an affixed stamp of landing permission, and (3) that the suspect falling under Article 24, item 3 is not granted special landing permission. In contrast, it is considered to be easy for a suspect himself to prove that he has a passport, a crewman's pocket-ledger, a stamp of landing permission, or a permit of special landing permission.

This Article excludes the part concerning Article 3, paragraph 1, item 2. The item provides that even if an alien possesses a valid passport, in a case where he intends to land in Japan without landing permission by an immigration inspector, he may not enter Japan. If he has entered Japan

against this provision, this constitutes illegal entry (illegal entry with a passport). Whether a suspect falls under this illegal entry with a passport is considered to be difficult to be proven by the suspect. Therefore, in respect of illegal entry with a passport, burden of proof is not on a suspect.

<Relevant Decision by the Court>

- The provision of Article 46 of the Immigration Control Order stipulates that the person suspected to fall under any one of the items from Article 24, items 1 through 3 of the said Order should prove that he does not fall under any of the items. Even if this provision results in his disadvantage, it cannot be said that the provision for burden of proof on a suspect does constitute a violation against the Constitution and is thus invalid. (December 15, 1958, Tokyo Higher Court)

### **Article 47 Procedures after Examination**

This Article provides for the findings and their effect as a result of an examination by an immigration inspector. The findings are classified as either positive, in which a suspect does fall under one of the deportable causes, and negative in which a suspect does not fall under any one of the deportable causes.

When an immigration inspector finds whether or not a suspect falls under one of the deportable causes, he is not necessarily subject to the opinions of an immigration control officer concerning the fact of suspicion and how the fact is related to the deportable causes.

<Relevant Decisions by the Courts>

- There are no grounds that the provision of Article 38, paragraph 3 of the Constitution, which is primarily applicable to the criminal procedures, is naturally applicable to the deportation procedures, which differ from the criminal procedures in nature, or that although the Immigration Control Order per se does not prohibit using a suspect's confession as the only proof such a prohibition is logically applicable.

Even though the Minister of Justice, who is the defendant of this case, has found the fact of a violation by the plaintiff based only on the confession record which was legally prepared, and has rejected the plaintiff's appeal, it is baseless to interpret the decision by the Minister of Justice as unlawful. (October 19, 1960, Tokyo District Court)

- The finding by an immigration inspector is not an internal act within the administrative agency but as an act which may influence the right, duty and/or the status of a suspect. Therefore, the finding differs from the issuance of a written detention order by a supervising immigration inspector, and is an independent administrative action which may be subject to an appeal suit. (December 9, 1975, Hiroshima District Court)

- Article 47, paragraph 4 of the Immigration Control and Refugee Recognition Act imposes on a supervising immigration inspector the duty of issuing a written deportation order without any delay to a suspect who does not request a hearing. Once the suspect has expressed his will "not to

request a hearing”, his right to request a hearing is to be lost and as a result, deportation, which is a seriously disadvantageous disposition for him, shall be definitely executed. Considering the significance of this, a supervising immigration inspector has a suspect express his will in an official document and confirms based on the document the fact that the suspect agrees on the findings of the immigration inspector, and also the fact that the suspect expressed his will “not to request a hearing”. The above-mentioned confirmation by a supervising immigration inspector should be regarded as a requirement for issuing a written deportation order. The said provision shall not be interpreted as stating that a supervising immigration inspector may have a suspect sign a document in front of him to renounce a hearing, but it is adequate to understand that a supervising immigration inspector is allowed, as a person who was in charge of the examination, to have a suspect sign the document. (September 14, 1995, Fukuoka District Court)

### **Article 48 Hearing**

1. A hearing is to examine whether the finding by an immigration is right and tenable, that is, as a so-called second trial, whether a suspect falls under one of the deportable causes.
2. A hearing should be conducted in front of a special inquiry officer, with an opportunity for explanation and defense given to a suspect.
3. The subject of a hearing is limited to the matter on whether the findings by an immigration inspector are or are not matter of fact.

#### <Relevant Decisions by the Courts>

- The provisions of Article 10, paragraph 3 and Article 48, paragraph 5 of the Immigration Control Order allow that an alien may have a representative and may also be given the right to appoint a representative at any time. In addition, since there is no provision to prohibit his attorney from becoming his representative, the above-mentioned provisions under the Immigration Control Order are in conformity with Article 34 of the Constitution. Also, it is understood that the provision of Article 34 of the Constitution demands that he be actually guaranteed the opportunity and means to appoint an attorney. Therefore, it should not be interpreted that the absence of a provision on the notification of the right to appoint a representative in the Immigration Control Order is directly against the provision of Article 34 of the Constitution. (July 15, 1974, Tokyo District Court)

- The provision of Article 34 of the Constitution is applicable to the detention in the criminal procedures, but not applicable to the detention under a written detention order and the examination procedures before and after the detention for the purpose of immigration control, which belongs to the administrative procedures.

The appellant was not notified by the immigration control officer, the immigration inspector and the special inquiry officer of his right to counsel. Also, although he and his attorney requested to have his attorney attend the hearing, the request was refused by the special inquiry officer on the grounds that such a provision does not exist under the Immigration Control Order. However, neither of the above-mentioned treatments violates the Constitution. (November 26, 1975, Tokyo Higher Court)



## **Article 49 Filing of Objection**

1. Filing of an objection is an appeal procedure against the judgment of a special inquiry officer as a result of a hearing, and the decision as to whether the suspect falls under any one of the deportable causes is to be made by the Minister of Justice as the so-called third as well as final trial.

2. “Supporting materials containing the grounds for his complaint,” which is provided for under Article 42 of the Regulation under the Act, should be submitted as part of filing an objection. The Article provides for the following four grounds for complaint and specifies the supporting materials respectively.

2-1. In a case where there has been a violation of the law and/or regulations in the examination process and it is evident that the violation affects the judgment of a special inquiry officer. “A violation of the laws and/or regulations” is the case where an immigration inspector or a special inquiry officer did not follow the required laws and/or regulations for the examination or hearing procedures, for instance, the case where a request by a suspect for the appearance of his representative for his hearing was rejected.

2-2. In a case where there has been a mistake in the application of the laws and/or regulations and it is clear that the mistake affects the judgment of a special inquiry officer.

“A mistake in the application of the laws and/or regulations” is the case where there has been a mistake in applying the fact found through the examination and hearing procedures to the laws and/or regulations, including the case of making a mistake in interpreting the laws and/or regulations.

2-3. In a case where there has been a misunderstanding of the fact and it is evident that the misunderstanding affects the judgment of a special inquiry officer.

“A misunderstanding of the fact” is the case where there has been a mistake of selecting proof or where the impression of a case is not based on the law of experience or of logic.

2-4. In a case where deportation is too severe.

This is the case where although a special inquiry officer’s judgment is lawful deportation is regarded as too severe considering other circumstances.

While an objection is to be filed in a case where a suspect complains about an immigration inspector’s judgment that the suspect falls under one of the items stipulated in Article 24, the suspect may also submit a written statement containing the grounds for his complaint that deportation is too severe. This is only because the statement may be referred to in the case of the Minister of Justice’s special permission to stay under Article 50, but not because the right to file an application for special permission to stay is given.

3. In a case where the Minister of Justice decides that the objection is well-grounded, a supervising immigration inspector shall immediately release the suspect (paragraph 4), and in a case where the Minister decides that the objection is groundless, a supervising immigration inspector shall immediately notify the suspect to that effect and issue a written deportation order (paragraph 5).

### <Relevant Decisions by the Courts>

- There is no provision for the period of making a decision by the Minister of Justice under the Immigration Control Order. In addition, the provisions of Article 45, paragraph 1, Article 47, paragraph 2, Article 48, paragraph 3 and Article 49, paragraph 5 are all directory provisions. Therefore, even if there occurs a violation against these provisions, the Minister's finding as well as judgment, etc. do not constitute illegality. (May 29, 1958, Tokyo District Court)

- The decision of the Minister of Justice on whether the appeal against the judgment of a special inquiry officer is well-grounded or not belongs to the appeal procedures, while the decision of the Minister of Justice on whether he gives special permission to stay is up to discretion of the Minister independently and is beyond the appeal procedures. However, if his discretion exceeds the limit permissible under law or becomes abusive, the decision itself carries an pertinent defect.

Under Article 49, paragraph 3, a supervising immigration inspector is obliged by law to issue a written deportation order when the Minister of Justice decides that the appeal is groundless. Therefore, the illegality of the pertinent defect in the Minister's discretion leads to the issuance of a written deportation order. (July 2, 1970, Tokyo District Court)

- The findings of an immigration inspector, the judgment of a special inquiry officer and the decision of the Minister of Justice in the deportation procedures are to examine and to decide whether a suspect falls under any one of the items in Article 24 of the Immigration Control Order, and a supervising immigration inspector must issue a written deportation order if all the findings, the judgment and the decision are finalized in disfavor of the suspect. Therefore, it is pointless to discuss the adequacy of discretion in these procedures. (July 28, 1970, Nagoya District Court).

- The disposition of denying an extension of the period of stay by the Minister of Justice and the disposition of issuing a written deportation order by a supervising immigration inspector are different and independent in terms of the purpose and effect, although they are inter-related. The former disposition does not necessarily lead to the latter, and also the latter disposition does not necessarily presuppose the former. Therefore, it should not be recognized that the latter disposition naturally shares the illegality of the former. (December 22, 1976, Nagoya District Court)

- If a suspect did not request a hearing, which is the prerequisite to an appeal, then it is not possible for the suspect to be given special permission to stay. (July 16, 1976, Kobe District Court)

### **Article 50 Special Cases of Decision of the Minister of Justice**

1. This Article provides for special cases of the Minister of Justice's decision on an appeal, i.e., his authority of giving special permission to stay. In principle, the Minister decides whether an objection is well-founded (Article 49, paragraph 3), and a suspect whose objection was decided to be groundless is conclusively denied his stay in Japan and deported from Japan (Article 49, paragraph 5). However, the Minister of Justice may give, in consideration that a suspect has special circumstances, special permission to stay to the suspect even though he finds that the objection is groundless. Thus, special permission to stay is considered different from the decision

on whether the objection is well-grounded.

2. The Minister of Justice may give special permission to stay in a case where the suspect concerned falls under one of the three items in paragraph 1 even though he finds that the objection is groundless.

“He has had in the past a permanent domicile in Japan as a Japanese national” in paragraph 1, item 2 means exclusion of those whose domicile was out of Japan prior to World War II. Therefore, Koreans or Taiwanese who used to be Japanese nationals are excluded.

In this connection, besides the case stipulated in each item of paragraph 1, the Minister of Justice may give special permission to stay in a case where the suspect concerned has been recognized as a refugee (Article 61-2-8).

3. It is literally evident that the Minister of Justice’s authority of special permission to stay, i.e., whether to give the permission or not is up to his discretion, and this principle is in accordance with the general principles of international law which provides that each sovereign State has freedom to decide how to accept an alien’s entry and residence. Therefore, even if the Minister of Justice does not give special permission to stay, the decision does not raise the issue of illegality in principle, although it may raise the issue of adequacy. Special permission to stay is an exceptional and merciful disposition by the Minister of Justice for a person deportable under Article 24. A suspect is not entitled to seek the right to be given such permission, and even if the Minister of Justice refuses the permission, the refusal does not at all intend to harm the legal status of the suspect.

The discretion in giving special permission takes into consideration not only the personal or individual circumstances of a suspect such as his career, family situations, etc. but also international situations, deportation situations, domestic and diplomatic policies, etc. Considering all these factors, the Minister of Justice makes the decision under his responsibility, and his discretion is extremely wide. These factors are complexly as well as systematically inter-related, that is, domestic and international situations change from time to time while personal or non-personal situations differ from case to case. Therefore, there exist no fixed and generalized criteria in giving special permission to stay.

4. In the case of giving special permission to stay, the Minister of Justice may impose conditions which he may deem necessary such as period of stay.(paragraph 2). These conditions are provided in Article 44, paragraph 2 of the Regulation under the Act. In the case of imposing the conditions for special permission to stay, while a status of residence is usually designated, the period of stay is also attached (see the text of Article 44, paragraph 2, item 1 of the Regulation under Act). However, in a case where special permission to stay is given to a person who falls under Article 24, item 2 (a person who landed in Japan without obtaining landing permission) or Article 24, item 6 (a person who stays in Japan beyond the period of landing permission), a certain type of special case for landing permission and the period of landing may be designated (proviso of Article 44, paragraph 2, item 1 of the Regulation under the Act). Besides the above-mentioned conditions, the limitation of activities and any other conditions which the Minister of Justice may deem necessary may be imposed (Article 44, paragraph 2, item 2 of the Regulation under the Act).

5. When the Minister of Justice has given special permission to stay to a suspect, a supervising immigration inspector must release the suspect immediately (paragraph 3).

<Relevant Decisions by the Courts>

(Nature, etc. of special permission to stay)

- Whether or not to give special permission to stay under Article 50 of the Immigration Control Order is up to the discretion of the Minister of Justice. (November 10, 1959, Supreme Court)

- Deportation is a disposition to order the alien concerned to leave the country, and is the sovereign right of a State. This sovereign right cannot be affected by the absence of diplomatic relations between Japan and the country to which the alien concerned is to be deported or by the absence of agreement on acceptance of deportees.

Whether or not to give special permission to stay under Article 50 of the Immigration Control Order or whether or not to permit an extension of period of stay under Article 21 of the said Order is up to the discretion of the Minister of Justice. (July 19, 1978, Sendai Higher Court)

- Only when the Minister of Justice's decision to deny special permission to stay is attributed to obvious misunderstanding of the facts of the case, his decision is to be evaluated as an abuse of his discretion and thus as illegal. This is limited only to a case when it is clearly evaluated that the Minister of Justice violates the nature of his granted authority. (December 7, 1995, Tokyo District Court)

- When the Minister of Justice decides to give special permission to stay to an alien, he shall consider, from the viewpoint of public security, maintenance of decent public morals and stable labor market in Japan, all behavior of the alien concerned during his residence in Japan, socio-economic situations in Japan, and any other relevant circumstances. Therefore, the Minister of Justice may naturally refer, as the basis for his decision, to various aspects regarding the alien concerned, such as the period of his illegal stay, the record of his illegal work and the type of the work, the level of his observance of law, etc. In this sense, even if the alien concerned is lawfully married to a Japanese national in a genuine marriage, it cannot be taken for granted that the Minister of Justice will exert his discretion and be obliged to give the alien concerned special permission to stay. (July 31, 1996, Tokyo District Court)

- It cannot be argued that to give special permission to stay is the customary principle or that to give it to the illegal entrant who has established a good life in Japan is the customary rule. (July 20, 1979, Tokyo Higher Court)

- Whether or not to give special permission to stay is up to the discretion of the Minister of Justice and its granting is merciful. Therefore, even if the Minister may have some quasi-standards in giving the special permission based on various previous practices, such standards should be regarded as an internal matter of the administrative agency solely for maintaining the good function of the administration and deviation from such standards raises only the issue of adequacy. When the Minister of Justice decides to give special permission to stay, he is not required to clarify the standard of judgment or its existence as the reason for his decision. Moreover, the absence of the clarification of the reason does not constitute abusive use of his discretion. (January 30, 1979, Tokyo Higher Court)

- The Minister of Justice takes into account international situations, diplomatic policies, etc., and decides whether or not to give special permission to stay. This decision constitutes a merciful disposition and should be made under his administrative responsibility. Although the discretion

in his decision is extremely wide, it is not limitless. In a case where his discretion is obviously contrary to humanity or to justice, it should be recognized that his discretion may constitute illegality as a deviation or abuse of discretion. However, even though the administrative agency misuses its discretion, it simply constitutes inadequacy but not illegality in principle. Therefore, it should be recognized that a plaintiff, who is waiting for the decision of being granted special permission to stay, must claim and prove that the Minister's discretion is egregiously contrary to humanity or to justice. (December 26, 1984, Osaka District Court)

- Special permission to stay under the provision of Article 61-2-8 of the Immigration Control and Refugee Recognition Act is not available for a person who has not yet been recognized as a refugee. It should be recognized that the decision to give special permission to stay under the provision of Article 50 of the said Act is up to the wide discretion of the Minister of Justice. Even if a person, who has not yet been recognized as a refugee or has even had his refugee status rejected, claims to be a refugee and requests for special permission to stay as a refugee, the denial of the permission does not constitute deviation from the Minister's discretion, and the issuance of a written deportation order is not illegal. However, in a case where special permission to stay has not been given due to a serious mistake, despite the fact that it is apparent that the person is a refugee, depending on the circumstances it could be said that deviation beyond the discretion exists. (July 6, 1993, Osaka Higher Court)

- "He has had in the past a permanent domicile in Japan as a Japanese national" in Article 50, paragraph 1, item 2 of the Immigration Control and Refugee Recognition Act means a person who used to have a permanent domicile in Japan, i.e., in the former mainland of Japan. Even though a person used to be a Japanese national, if he had a permanent domicile in the Korean Peninsula, this provision is not applicable to him. (July 9, 1987, Osaka Higher Court)

(Cases where there was found to be no abusive use of the Minister of Justice's discretion in his decision to deny special permission to stay)

- It is not recognized as an established practice or administrative standard to give special permission to stay, as a matter of principle, to a Taiwanese or Korean who has entered Japan to join his relatives in Japan. To prevent the separation of a family or relatives is not established international customary law and the resolution of the International Red Cross is not legally binding. (January 28, 1980, Tokyo Higher Court)

- The plaintiff could not re-enter Japan within the valid period of re-entry permission. However, this is not because of a reason not attributable to his fault such as sickness, the absence of transportation due to a disaster, but because he was prosecuted by a judicial officer in South Korea and thus prohibited from departing from South Korea on the account of illegal behavior attributable to him. In a case where this person illegally entered Japan and appeared beyond the valid period of re-entry permission, it cannot be said that denial of special permission to stay to him constitutes deviation or abuse of the Minister of Justice's discretion. (May 30, 1984, Osaka District Court)

- The past statistics of special permission to stay, which were submitted as supporting materials with the filing of an objection, will be proved prima facie based on the past record as the plaintiff and others claim. However, in light of the nature of the Minister of Justice's discretion in deciding to give special permission to stay, the decision is not suitable to management by pattern, and each case should be decided with independent discretion. (July 18, 1986, Osaka Higher

Court)

## **SECTION IV EXECUTION OF WRITTEN DEPORTATION ORDER**

### **Article 51 Form of Written Deportation Order**

1. A written deportation order is issued by a supervising immigration inspector when the deportation procedure is determined, i.e., when a suspect agrees to the findings of an immigration inspector (Article 47, paragraph 4), when a suspect agrees to the findings of a special inquiry officer (Article 48, paragraph 8) or when a suspect receives from the Minister of Justice notification stating that the suspect's objection is groundless. A written deportation order is compulsorily issued when the deportation procedure is finalized, and a supervising immigration inspector does not have any discretionary power in issuing the order unlike a written detention order which is issued by his judgment on request by an immigration control officer (Article 39, paragraph 2 and Article 43, paragraph 2).

In a written deportation order, besides the full name, age, nationality of the deportee, reason for deportation, etc. as provided for in this Article, the number of the order, the address of residence and occupation of the deportee, the method and destination of deportation, etc. in accordance with the Annexed form no. 63 of Article 45 of the Regulation under Act, should be entered. A supervising immigration inspector shall sign his name and affix his seal thereto.

2. A written deportation order is to clarify toward an alien whose deportation procedure has been finalized the grounds for, method and destination of deportation, and to state that he shall be deported from Japan under the provision of Article 24. Also, the order is to confirm that the alien concerned is a deportee, and at the same time to inform an enforcement officer (an immigration control officer) of the deportee, the grounds for deportation and, how and to where the deportee will be deported, which are all specified in the order. The nature of the order differs from that of a written detention order in which a supervising immigration inspector demonstrates his permission to detain a suspect.

#### **<Relevant Decisions by the Courts>**

- The provision of Article 38 of the Regulation under the Immigration Control Order requires that the method and destination of deportation be entered in a written deportation order. It is reasonable to interpret that the description of the method of deportation is a directory provision to facilitate the execution of deportation by an enforcement officer. Therefore, the description such as "compulsory expulsion" is not appropriate, but does not affect the validity of the order. Contrary to this, the description of the destination is not only important to the deportee but also necessary for the enforcement of deportation. Therefore, although it can be said that the description such as "the destination under Article 53 of the Immigration Control Order" does not exactly specify the destination of deportation, if the destination can be specified from the provision of Article 53, paragraph 1 of the Immigration Control Order in conjunction with the other descriptions entered in the order, it should be understood that the description as such does not affect the validity of the written deportation order. (March 15, 1956, Yokohama District Court)

- The absence of the description of reasons for deportation violates the provision of Article 51 of the Immigration Control Order, however, in a case where the deportation reasons are clarified and the deportation is finalized through the entire deportation procedures from the findings of an immigration inspector to the decision of the Minister of Justice, it is reasonable to understand that such absence does not affect at all the validity of the written deportation order. (February 24, 1958, Tokyo Higher Court)

- While the name of the State is usually entered as the destination of deportation in a written deportation order, in consideration of deportation of a person whose country of nationality has not been recognized by Japan yet, it is reasonable not to prohibit entering the name of a certain “area” in the order. (October 18, 1977, Tokyo District Court)

## **Article 52 Execution of Written Deportation Order**

1. As clearly understood in paragraph 3, “execution of a written deportation order” means to deport a person issued a written deportation order (a deportee) to the designated destination promptly and thus to attain the purpose of expelling a person undesirable to our society. Escort and physical restraint of a deportee necessary for such a purpose are also included in the execution.

2. Execution of a written deportation order is in principle to be completed by an immigration control officer by deporting a deportee to the designated destination of a foreign country (the text of paragraph 3). However, in a case where a carrier is responsible in this regard under the provision of Article 59, delivery of a deportee to the carrier concerned constitutes execution of a written deportation order (proviso of paragraph 3). While the main purpose of execution of a written deportation order is to deport a deportee, this Article provides for three other dispositions, i.e., voluntary departure at his own expense (paragraph 4), detention (paragraph 5) and release (so-called special release, paragraph 6).

“Voluntary departure at his own expense” means that a deportee who has the will of voluntary departure from Japan and can afford the expense departs from Japan with the permission of the director of a detention center or a supervising immigration inspector. It is assumed that this disposition was provided for in consideration of reducing the financial burdens of the administration, if a deportee desires to depart from Japan at his expense.

“Detention” is to put a deportee under physical restraint, in a case where the deportee cannot be deported immediately, until the deportation becomes possible. Unlike in the case of detention under a written detention order, which should not exceed 60 days (Article 41, paragraph 1), the duration of detention under a written deportation order is not limited. However, as provided for in paragraph 3 of this Article, it is the duty of an immigration control officer to deport a deportee promptly, and he may not delay the deportation nor continue to detain the deportee when the deportation is objectively possible.

3. “Release” (special release) in paragraph 6 means to release a deportee under certain conditions, in a case where it has been found that the deportee cannot be deported immediately after he was detained. “If it is found that a deportee cannot be deported” means the case that there exist objective situations making it possible to deport a deportee for a considerable period due to various circumstances. Temporary rejection of the country of destination in a written deportation

order, the deportee's temporary sickness, a passport the validity of which has expired, cannot be reasons for the release. When a suspect has been found not to fall under any one of the deportable causes in the process of the investigation, hearing or decision by the Minister of Justice (Article 47, paragraph 1, Article 48, paragraph 6 and Article 49, paragraph 4) or when a suspect has been given special permission to stay although he falls under one of the deportable causes (Article 50, paragraph 3), the suspect is to be released and the release enables him to recover his physical freedom completely. However, unlike such release, a person under special release cannot recover his freedom completely after release. His status remains a person to be deported (a deportee), and thus whenever it becomes possible for him to be deported, he is to be deported under the same written deportation order.

4. Although it is a principle that a written deportation order is to be executed by an immigration control officer (paragraph 1), a police officer or maritime safety official may execute the order under exceptional circumstances (paragraph 2).

#### <Relevant Decisions by the Courts>

(The relations between deportation, and the Constitution or international law)

- The so-called non-delivery policy of a political criminal has not been recognized yet as established international customary law. (January 26, 1976, Supreme Court)

(Execution of deportation and the right of trial)

- Even if a deportee seeking the cancellation of a written deportation order is deported, he can continue to pursue his suit with his representative and he may be readmitted in due course when questioning him is necessary. Therefore, the execution of a written deportation order does not mean to deprive the right of trial for a deportee. (March 10, 1977, Supreme Court)

(Purpose of detention and the nature under a written deportation order)

- "Detention" under Article 52, paragraph 5 of the Immigration Control Order has two purposes, i.e., to prevent a deportee from fleeing and to deny the deportee's residence in Japan in accordance with the status of residence procedure under the Immigration Control Order. (December 13, 1977, Tokyo Higher Court)

- The detention based on a written deportation order under Article 52 of the Immigration Control Order does not have any similarities with the arrest and detention in the criminal procedures in its nature, purpose and method. Therefore, the argument that the detention contravenes the provisions of Articles 31 and 33 of the Constitution is against the above-mentioned premise. (May 30, 1980, Supreme Court)

(Conditions for special release)

- Although it is not possible to deport the deportee directly to North Korea according to the text of Article 52, paragraph 3 of the Immigration Control Order, he may be able to depart voluntarily to North Korea by using a ship departing from a port of our country, and this can be regarded as one of the methods of execution of a written deportation order. Therefore, even though there is no way to deport the deportee directly to North Korea, it cannot be said that "it is found that the deportee cannot be deported". (December 28, 1967, Osaka District Court)



- It should be understood that “it is found that the deportee cannot be deported” in Article 52, paragraph 6 of the Immigration Control Order means the case in which from objective circumstances the execution of deportation has become impossible. (January 11, 1971, Nagasaki District Court)

(Others)

- A written deportation order must be shown to a deportee at the time of the execution, however, it is not required to notify a deportee in advance that the order has been issued. (March 23, 1954, Kobe District Court)

- Although 9 years have passed since the issuance of a written deportation order, it is still valid because there is no application of exclusion period, and also because there is no application of expiration date or of the principle of losing the validity of a written deportation order under the Order in a case where a deportee has been fleeing and thus execution of a written deportation order has not been completed. (September 24, 1974, Fukuoka District Court)

- Execution of a written deportation order is an administrative action and therefore a defect pertinent to its execution can be subject to an administrative suit. However, the timing of its execution is totally up to the discretion of the administrative agency. (December 23, 1974, Osaka Higher Court)

- In respect of execution of a written deportation order, it is possible to deport a deportee to a country with which Japan does not have diplomatic relations. (July 19, 1978, Sendai Higher Court)

### **Article 53 Destinations of Deportees**

1. This Article provides for destinations of deportation. Destination is to be decided when a supervising immigration inspector, who issues a written deportation order, enters the destination in the order (Annexed form no. 63 of the Regulation under Act).

Paragraph 1 provides for the principle that a deportee should be deported to his home country and paragraph 2 provides for the exception, while paragraph 3 provides for the principle that a deportee should not be deported to a country where he would be persecuted. The country in this Article includes the area under the control of a State which has not yet been recognized by Japan.

2. “If a person cannot be deported” in paragraph 2 means not only the case in which deportation is simply impossible as a matter of fact (for instance, in a case where the country of destination is at war, etc.), but also the case in which it is objectively recognized that a deportee would be persecuted on account of his political opinions such as the case provided for in paragraph 3. “According to his desire” means that a deportee’s desire should be considered in the selection of the country to which he is to be deported in a case where he cannot be deported to his home country. However, this does not mean that he would not be deported if he does not desire to be deported to a third country.

Unless the principle in paragraph 1 is possible, one of the countries stipulated in respective items of paragraph 2 is to be designated as a country of destination. However, such a third country does not have any legal binding to accept the deportee concerned, and it is thus necessary to obtain an approval of acceptance from the country. Therefore, in such a case, in consideration of not only

the desire of the deportee but also for the convenience of deportation such as the willingness of a third country, entry permission to a third country, difficulty in deportation, cost of deportation, etc., the country of destination is to be decided.

3. Paragraph 3 was added by an amendment of law, so as to make it clear that deportation to the destination of persecution should not be executed - the so-called principle of *non-refoulement*, as provided for in Article 33 of the Refugee Convention. This paragraph is parallel with the provision of Article 33 of the Refugee Convention. Needless to say, this principle is applied to not only the person recognized as a refugee but also to any other aliens.

“Cases where the Minister of Justice finds it considerably detrimental to the interests and security of Japan” corresponds with the provision of Article 33, paragraph 2 of the Refugee Convention, which states that “... a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.” Specifically, when the Minister of Justice finds a person dangerous to national security or finds a person, who has been convicted by a final judgment with imprisonment exceeding 1 year without suspension of sentence, dangerous to Japanese society, an exception to the principle of *non-refoulement* is considered to be available. Although the expression of this paragraph is different from that of the Refugee Convention, the contents are identical, and thus the exception does not affix any reservation to the Refugee Convention.

“The countries provided for in the preceding two paragraphs” means any country which can be a destination of deportation. Also, “the territories of countries stipulated in the Refugee Convention, Article 33, paragraph 1” means territories where life or freedom of a person would be threatened on account of his political opinions, etc.

#### <Relevant Decisions by the Courts>

- It is evident according to the provision of Article 53 of the Immigration Control Order that deportation under a written deportation order against a stateless person is possible. (February 19, 1979, Tokyo District Court)

- In a case where the destination of a written deportation order is expressed as “Korea”, it is understood that the deportee may voluntarily choose the area under the jurisdiction of the Republic of Korea or another area. Therefore, it cannot be said that such expression is disadvantageous to the detainee. (December 28, 1967, Osaka District Court)

- Even though the destination of deportation was entered as “Korea” because it is difficult to judge whether the illegal entrant is a national of the Republic of Korea or not, this does not violate Article 53 of the Immigration Control Order or Article 38 of the Regulation under Act. (October 18, 1977, Tokyo District Court)

- Even though his family in North Korea might be persecuted in a case where he is deported to the Republic of Korea, it is clear that this consequence per se does not fall under the provision of Article 53, paragraph 3 of the Immigration Control and Refugee Recognition Act. (May 7, 1984, Tokyo Higher Court)

## SECTION V PROVISIONAL RELEASE

### Article 54 Provisional Release

1. Provisional release under this Article is to suspend detention of and release temporarily the person detained at an immigration detention center or detention facility by virtue of a written detention order or a written deportation order, upon application by a person who has certain relations with the person or ex officio, with a bail bond and with necessary conditions to be obeyed during such a temporary release.

The procedure of provisional release was established because during the period of detention, for instance, detention under a written detention order may last for 60 days (Article 41, paragraph 1) and detention under a written deportation order may last until the execution of deportation becomes possible (Article 52, paragraph 5), temporary release of a detainee may become necessary due to the health conditions of the detainee, preparation for departure from Japan, etc.

2. Provisional release is authorized, upon application by a detainee himself, his proxy or ex officio, by a director of an immigration detention center in the case where the detainee has been detained in such a center or by a supervising immigration inspector who is posted in the district's immigration bureau in the case where the detainee has been detained in a detention facility.

3. When a director of an immigration detention center or a supervising immigration inspector permits provisional release, he orders a detainee to deposit a bail bond not exceeding 3 million yen with conditions as may be deemed necessary, such as restrictions on places of residence and area of movement and duty of appearing at a summons (paragraph 2). "Conditions as may be deemed necessary" include the duration of provisional release.

#### <Relevant Decisions by the Courts>

- Provisional release may be extended as long as the reasons for the release exist. Therefore, the person authorized provisional release does not have urgent necessity to seek the suspension of detention. August 28, 1975, Osaka Higher Court)

- When a written deportation order is issued to an illegal entrant, an immigration control officer must promptly deport the alien concerned to the destination of the order to execute the order (Article 52, paragraph 3 of the Immigration Control Order). However, when a deportee cannot be deported out of Japan immediately, the deportee may be detained at an immigration detention facility, etc. until the deportation becomes possible (Article 52, paragraph 5 of the said Order). Such detention is necessary because a deportee should be under physical restraint for deportation. Also, since an illegal entrant is not permitted to engage in any residential activities in Japan, unless he is detained and prohibited from engaging such activities, it may practically constitute approval of his residence and thus may confuse the status of residence policy in Japan. On this account, it is evident that detention is a prerequisite for the deportation procedures. Also, even though execution of deportation is suspended, it falls under the provision of Article 52, paragraph 5 of the Immigration Control Order. Thus, it should be recognized that detention should be continued in principle under the said Order.

The provisional release procedure provided for in Article 54 of the Immigration Control Order should be interpreted, as the exception to the above-mentioned principle, to permit temporary

release of a detainee with conditions as may be deemed necessary, in a case where special situations exist. For instance, when voluntary departure at a detainee's expense is possible, when preparation for departure or treatment of sickness is necessary for a detainee or when humanitarian considerations are needed for a detainee, detention of such a detainee may hinder smooth execution of deportation. It should be recognized that the decision to accord provisional release is up to the wide discretion of a director of an immigration detention center or a supervising immigration inspector based on the above-mentioned interpretation of provisional release.

Since deportation under a written deportation order against the plaintiff is now suspended, he cannot be deported immediately out of Japan (there is no other reason making it impossible to deport him). Under this circumstance, he should be detained until execution of deportation becomes possible. There are clearly no grounds that the defendant does not have any legal obligation to authorize provisional release or to notify the plaintiff of the reasons to detain him.

Also, since provisional release differs in nature from the bail stipulated under the Code of Criminal Procedure, it is irrelevant to compare the provisional release procedures under the Immigration Control Order with the bail under the Code of Criminal Procedure and criticize the provisional release under the Order. (September 27, 1976, Tokyo District Court)

- There is no principle of law to interpret that while the suit seeking the cancellation of a written deportation order, etc. is pending at the court the person concerned should be always accorded provisional release. (December 13, 1976, Tokyo District Court)

### **Article 55 Rescission of Provisional Release**

1. Rescission of provisional release provided for in this Article is to re-detain a person who was accorded provisional release. A person is to be re-detained, (1) if he has escaped, (2) if there are reasonable grounds to suspect that he may escape, (3) if he fails to comply with an order to appear at a summons without valid reasons or (4) if he has violated any conditions attached the provisional release (paragraph 1). The officer responsible for rescission of provisional release is the same person who accorded the provisional release.

2. A bail bond should be confiscated without fail under paragraph 3 if the provisional release is rescinded. Confiscation of a bail bond is classified into two categories; whole and partial confiscation. When the cause of rescission of provisional release is either (1) or (3) mentioned above, the whole bail bond is to be confiscated. Otherwise, part of the bail bond is to be confiscated. In the latter, the exact amount to be confiscated is decided by a director of an immigration detention center or a supervising immigration inspector according to the circumstances.

In a case where a deportee, who was detained under a written deportation order, departs voluntarily at his own expense or is re-detained after the duration of his provisional release has expired, since it is not a case of rescission of provisional release, the whole bail bond is to be refunded.

Permission of provisional release does not automatically become invalid even though the duration of provisional release, which is one of the necessary conditions for provisional release, has expired. When a person has escaped or failed to comply with an order to appear at a

summons without valid reasons, his provisional release shall be rescinded and his bail bond shall be confiscated even after the duration of provisional release has expired.

<Relevant Decision by the Court>

- The person having deposited a bail bond for another person under Article 54, paragraph 2 of the Immigration Control Order cannot be said to have had his pertinent right or legal benefit violated by the mere fact that the provisional release to the other person has been rescinded. If he seeks the return of a confiscated bail bond, he may argue, as a prerequisite of his claim, that the rescission of the provisional release is illegal. Therefore, he does not have the legal right to seek independently the cancellation of rescission of provisional release. (September 6, 1957, Tokyo District Court)

## **CHAPTER VI RESPONSIBILITY OF CAPTAIN OF VESSEL, ETC. AND CARRIER**

### **Article 56 Duty of Cooperation**

1. In order to conduct a landing examination or to prevent illegal entry or illegal landing at a port of entry without fail, it is indispensable to obtain cooperation from a captain of a vessel, etc. and a carrier, who are responsible for controlling crew members or passengers. Therefore, this Act imposes on them certain responsibilities and duties and requires them to carry out these responsibilities and duties under the following Articles.

2. This Article imposes on a captain of a vessel, etc. entering Japan and a carrier who operates such a vessel, etc. a duty to provide general cooperation for an examination or other functions which an immigration inspector carries out. However, the duty under this Article remains a matter of cooperation, and does not mean to act on behalf of an immigration inspector. It also differs from the duties pertinent to a captain of a vessel, etc. and a carrier, which are provided for in Articles 57 through 59.

3. Article 51 of the Regulation under Act specifically stipulates the duties of cooperation provided for in this Article. The contents are as follows.

- (1) To notify prior to the arrival of a vessel, etc. an immigration inspector of the arrival time of the vessel, etc., the number of foreign passengers and crew members on board, etc. in a proper manner.
- (2) To provide any assistance deemed as necessary for an immigration inspector when he carries out boarding a vessel and other functions.
- (3) To pay enough attention to prevent the landing of those who have not been given landing permission.
- (4) To obey the instructions when particularly instructed to provide cooperation by an immigration inspector.

4. A violation against this Article shall be penalized with fine not exceeding 500,000 yen (Article 77, item 1).

## **Article 57 Duty of Reporting**

1. This Article provides for the duty of reporting and so on by a captain of a vessel, etc.
2. Article 52, paragraphs 1 and 2 of the Regulation under Act stipulate the items to be entered in “complete lists of passengers and crewmen”.
3. “Any alien aboard the vessel, etc. without a valid passport or crewman’s pocket-ledger” should not enter Japan. Thus, such entrance is to be prevented by imposing the duty of reporting such a situation on a captain of a vessel, etc.
- 4-1. The report provided for in paragraph 3 may be submitted at the same time as complete lists of passengers and crewmen are submitted under paragraph 1.
- 4-2. Except for name, the following items should be reported under Article 52, paragraph 3.
  - (1) The nationality, date of birth, number of the pocket-ledger and title of a crewman granted multiple landing permission, the number of his multiple landing permission concerned and the date of the permission.
  - (2) The name of a vessel, or the registration number or flight number of an airplane.
  - (3) The country or company name to which a vessel, etc. belongs.
- 5-1. Paragraph 4 provides that a captain of a vessel, etc. shall report “the person granted permission of landing in transit as provided for in Article 15, paragraph 1” and “the person who received landing permission for crewman and is supposed to be aboard his proper vessel, etc.” This is to confirm that the persons with such permission are aboard the vessel thereby preventing them from staying illegally beyond the designated period.
- 5-2. Paragraph 4 also provides that a captain of a vessel, etc. shall report “any person who seeks to depart from Japan in violation of the provisions of Article 25, paragraph 2, or Article 60, paragraph 2”. This is to prevent the illegal departure of an alien or a Japanese.
6. A violation against this Article shall be penalized with fine not exceeding 500,000 yen (Article 77, item 2).

## **Article 58 Duty of Prevention of Landing**

1. This Article provides that a captain of a vessel, etc. shall have a duty to prevent an alien, who has entered Japan without a valid passport or crewman’s pocket-ledger (an illegal entrant), from leaving the vessel, etc. which he was aboard, landing and staying in Japan illegally, under the responsibility as head of the vessel, etc. which transported the alien concerned.
2. A violation against this Article shall be penalized with fine not exceeding 500,000 yen (Article 77, item 3).

## **Article 59 Duty of Sending Back**

1. This Article provides that it is the duty of a captain of a vessel, etc. and a carrier who operate such a vessel, etc. to send back, at their own expense, a person who was denied landing at a port

of entry or a certain deportee aboard their vessel.

2. In respect of an alien who was denied landing, it is necessary not only to send back the alien concerned, but also to restrict his physical freedom and to ensure his return. Thus, “sending back” in this Article includes both meanings, i.e., return and physical restraint.

Japan, as a State responsible for immigration control, should expel an alien denied landing and a deportee from Japan immediately. In this sense, as a carrier has its own transportation means, if a carrier having transported such an alien cooperates in sending him back, it is expected that such an alien could be more easily and surely sent back. Given these circumstances, for the purpose of efficiently sending back an alien, etc. who was denied landing, it has been established as an international practice that a carrier, which provides for international transportation, has the duty to send back such an alien.

3. “Any other vessel, etc., owned by the same carrier” means a vessel, etc. different from the vessel, etc. by which the person to be sent back arrived in Japan. When it is difficult to send back not only a deportee but also an alien denied landing immediately due to the operating schedule of a vessel, etc. and for any other reasons, a different vessel, etc. shall send back this person. In consideration of the financial responsibility and burden of the cost for sending back these people, this duty is subject to a vessel, etc. owned only by the same carrier because such a carrier is regarded as having primary responsibility.

4. “At his own expense and on his own responsibility” means the responsibility not only for paying for the expense of return and physical restraint of the person to be sent back but also for ensuring the physical restraint per se. However, the Japanese authorities sometimes conduct the physical restraint of a person to be sent back. In this case, as provided for in Article 59, paragraph 3, a captain of a vessel, etc. or a carrier may be exempt from bearing the responsibility and expense to a certain extent.

5. “Any person denied landing in accordance with the provisions of Chapter III, Section I or II” in paragraph 1, item 1 means a person who was denied landing in the process of a general landing examination.

6. “Any person deported for coming under any one of Article 24, Item (5) to (6)-2” in paragraph 1, item 2 is a person as follows.

- (1) Any person who was deported in violation of the conditions attached to permission of provisional landing (Article 24, item 5).
- (2) Any person who was ordered to leave Japan but has not left Japan without delay (Article 24, item 5-2).

If any person comes under this item, he was supposed to be denied landing and thus to be deported from Japan. Like the case of a person denied landing, it is reasonable for a captain of a vessel, etc. or a carrier to have the duty to send back such a person.

- (3) Any person who was granted special landing permission but was deported because he stayed in Japan beyond the period entered in his passport or permit (Article 24, item 6).

As a matter of principle, a person granted special landing permission, regardless of

being a crewman or passenger, is to be granted landing permission upon the application by a captain of a vessel, etc. or a carrier who operates the vessel, etc. while the person is aboard the vessel, etc. Therefore, a captain of a vessel, etc. or a carrier is responsible for sending back such a person.

- (4) Any person who did not return to his vessel or did not leave Japan within the designated period after his multiple landing permission was revoked (Article 24, item 6-2).

Like the above-mentioned case (3), this is regarded as one of the cases where a person granted special landing permission stays in Japan beyond the period entered in his passport or permit.

7. Paragraph 1, item 3 provides that in respect of “among those who have been ordered within 5 years from the date of landing to be deported for coming under any one of the items of Article 24, any alien of whom a captain of a vessel, etc., or a carrier who operates the vessel, etc. can be considered as having had clear knowledge of the existence of grounds for deportation at the time of his landing” the captain or the carrier is responsible for sending back such an alien. Considering that such a captain or carrier had the alien concerned land in Japan despite his responsibility for preventing such landing, it is reasonable to impose the duty of sending back the alien concerned on the captain or the carrier.

The duty of sending back in this item is imposed on a captain of a vessel, etc. or a carrier of a vessel, etc. to restore the violation against the duty of cooperation for immigration control, and this duty has been generally accepted as an international practice. Thus, “landing” in this item includes not only legal landing but also illegal landing, for instance, the landing in a case where a captain of a vessel had an alien land in Japan secretly by request of a smuggler, etc.

8. “Some other vessel, etc.” in paragraph 2 means a vessel, etc. which is not owned by the carrier concerned. Although a vessel, etc. owned by the carrier concerned should be the first option, if there is no proper vessel, etc. and also if there is the possibility that it would take a considerable time for the sending back if the carrier concerned was involved, a vessel, etc. owned by a different carrier may send back an alien on the responsibility and at the expense of the carrier who carried the alien to Japan.

9. There is legislation to stipulate that the Japanese authorities shall place an alien in possession of a valid passport and also a valid visa under physical restraint.. Thus, paragraph 3 provides that if such an alien is kept in a certain facility a captain of a vessel, etc. or a carrier may be exempt from bearing all or part of the responsibility and expense arising from the keeping of the alien.

10. “The facilities designated under the provisions of the Ministry of Justice Ordinance” mean, under Article 52-2, paragraph 1 and the Annexed Table 5 of the Regulation under Act, the lodging facilities, which are nearby the New Tokyo International Airport (Narita Airport) or the Kansai International Airport and also designated by the Minister of Justice.



## **CHAPTER VII DEPARTURE FROM AND RETURN TO JAPAN OF JAPANESE NATIONALS**

### **Article 60 Departure of Japanese Nationals**

1. Confirmation of departure by an immigration inspector is to confirm the fact of departure of every Japanese from Japan by rightly recording such a departure. This is for the purpose of conducting legitimate immigration control, and departure per se is not subject to permission to go abroad. This Article has the same purpose as Article 25, which provides for departure of aliens, but Article 60 does not provide for any procedures to stop the departure of Japanese nationals. If a Japanese national is in possession of a valid passport, unless an arrest warrant, etc. is issued against him and he is thus detained, his departure cannot be prohibited.

The actual procedures and method to confirm departure are prescribed in Article 53 of the Regulation under the Act, and the confirmation is to be done by affixing a stamp of departure in a passport.

2. This Article is applied when a Japanese departs from Japan with the intention to proceed to “an area outside of Japan.” Thus, when a person proceeds to the high seas and returns straight to Japan, this Article is not applicable (see commentary 2 of Article 25).

3. A Japanese crewman is exempted from the procedures for departure. This is to facilitate his departure, considering the special nature of departure in that a crewman moves together with a vessel, etc. However, as a crewman is also required to carry a passport or a crewman’s pocket-ledger in his visiting country, in reality, it is likely that he carries such a document.

4. Violation against this Article shall be penalized.

#### <Relevant Decisions by Courts>

- The Provision of Article 60 of the Immigration Control Order is not to restrict departure itself by law but only to prescribe the necessary procedures to be followed for departure. There may exist some occasion where freedom of departure is in fact restricted under the procedures. However, such procedures have been stipulated for public welfare aiming at conducting legitimate immigration control and therefore they do not violate Article 22, paragraph 2 of the Constitution. (November 28, 1962, Supreme Court)

- If a crew member intends to depart from any port other than the port of entry and departure or to depart for illegal purposes such as committing a crime, he cannot claim the benefit of exemption under Article 60 of the Immigration Control Order. (October 30, 1953, Fukuoka Higher Court)

- To depart from Japan without undergoing the due procedures prescribed under Article 60 of the Immigration Control Order, even if it had been very likely that he would not have been issued a passport, cannot be claimed as self-defense, emergent refuge or as a legitimate act. (July 16, 1959, Fukuoka Higher Court)

- In a case where a person, who had been already issued a passport, entered false descriptions in an application form for a passport and then has been reissued a passport with a false name, when an immigration inspector denies departure of such a passport holder, the denial does not constitute illegality. (April 23, 1986, Yokohama District Court)

## **Article 61 Return to Japan of Japanese Nationals**

1. Confirmation of return to Japan by an immigration inspector is, like confirmation of departure, to confirm the fact of return to Japan for the purpose of conducting legitimate immigration control. The actual procedures and method to confirm return are prescribed in Article 54 of the Regulation under the Act, and the confirmation is to be done by affixing a stamp of return in a passport. However, in a case where the person concerned does not possess a passport, a certificate of return is to be issued according to form no. 73 of the Regulation under the Act.

2. The parenthesized description in this Article; “a document that certifies Japanese nationality if he is prevented from possessing a valid passport,” clarifies that any Japanese national unable to possess a valid passport owing to unavoidable circumstances also can return to Japan if he possesses a document that certifies Japanese nationality and his Japanese nationality can be thus confirmed.

A passport is the most basic travel document that certifies nationality and identity of a person who travels abroad, and it is usual that a Japanese national returns to Japan with a valid passport. However, even though a person does not possess a passport, in a case where he is confirmed to be a Japanese national with a certain document, it is natural for him to be allowed to return. Given this, the provision corresponding to Article 60, paragraph 2 does not exist in this Article, and nor does the provision for violation against this Article.

<Relevant Decision by Court>

- Even if the person refusing to undergo the procedures of return under Article 61 of the Immigration Control Order has not been authorized to disembark, it may not be said that there is urgent necessity to seek, at the court, the suspension of the disembarkation. (August 22, 1968, Kagoshima District Court)

## **CHAPTER VII-2 RECOGNITION OF REFUGEE STATUS, ETC.**

### **Article 61-2 Recognition of Refugee Status**

1. Recognition of refugee status is, in order for Japan to fulfill various obligations, a responsibility as provided for in the Refugee Convention, an act to determine whether the alien concerned meets the requirements to be a refugee under the Refugee Convention, that is, whether the person is a refugee or not.

Those who can apply for refugee status, which is stipulated in paragraph 1, are restricted to aliens in Japan. “Aliens in Japan” means those who are physically in Japan whether their status is legal or illegal. Therefore, those who are outside of Japan cannot be recognized as refugees in Japan.

“Based on the data furnished” means that the burden of proof should be demonstrated by an applicant, who should submit his own statement and any other evidences to prove the eligibility of his refugee status. However, in every case where the proof is not sufficient and thus refugee status is rejected, appropriate recognition of refugee status cannot be ensured. Thus, in

accordance with the provision of Article 61-2-3 (Inquiry of the Facts), an examination to confirm an applicant's statement is to be conducted, and if necessary, an applicant is to be given an opportunity for further declaration, defense and/or provision of new evidence. After all, the situation, in which refugee status has not been recognized because an applicant could not provide sufficient proof to be a refugee, is the one in which even a thorough examination may not clarify the eligibility for refugee status.

“The Minister of Justice may ... recognize such a person as a refugee” means that the Minister of Justice is empowered to recognize refugee status. Japan acceded to the Refugee Convention and the Protocol under the Agreement of the Cabinet Meeting dated March 13, 1981, and the Agreement stipulated that the Minister of Justice shall be exclusively in charge of recognition of refugee status. Therefore, each administrative agency should follow the decision of recognition of refugee status by the Minister of Justice (see reference at the end of the commentary of Article 1.)

2. “The fact that the circumstances in connection with which he may become a refugee” in paragraph 2 means the incident or fact which may cause fear of persecution as provided for in Article 1 of the Refugee Convention. The typical example is considered to be the case, as a result of a revolution or a coup d'état in the home country of the person concerned while he is staying in Japan, that he may be persecuted if he returns to his home country. The person seeking asylum in Japan, should notify the authorities promptly to that effect, which is necessary for the authorities to conduct legitimate recognition of refugee status. The time limit of 60 days for an application of refugee status is considered to be long enough, in the geographical and social context of Japan, to apply at a regional immigration office.

“Unavoidable circumstances” in the same paragraph include the cases in which an alien could not apply for refugee status within 60 days due to sickness, unavailability of transportation, etc.

#### <Relevant Decisions by Courts>

- It is more or less recognized that, in fact, his anti-Establishment speech and behavior had never resulted in the appellant being detained or prohibited from moving around freely even though he was a soldier. Thus, it cannot be said objectively that the appellant has a well-founded fear of being persecuted due to his political opinion (while desertion from military services or illegal departure from the home country is naturally subject to punishment, this is not relevant to the recognition of refugee status). It is generally known in North Korea that a person having deserted from military service or escaped from the territory of North Korea may be subject to severe punishment including being shot to death. When a person escapes from such countries, he should be prepared to do so at the risk of his own life. So, it is not acceptable at all that such an escape is attributable to fear of persecution due to his political opinions. (May 7, 1984, Tokyo Higher Court)

- It is reasonable to interpret “persecution” as an assault or pressure which accompanies intolerable pain for an ordinary person and thus infringes on or oppresses his life or physical freedom. In order to conclude that “a person has well-founded fear of being persecuted,” not only the subjective element, in which the person concerned has a fear of being persecuted, but also the objective element, in which an ordinary person would also have such fear under the same circumstances, is essential. (July 5, 1989, Tokyo District Court)

- Article 61-2, paragraph 2 provides that an applicant for refugee status must submit the application within 60 days after the day he became aware of the circumstances in connection with which he may become a refugee arose while he was in Japan. This time limit is one of the procedural requirements for recognition of refugee status. If an application is submitted long after the day he became aware of the circumstances in connection with which the applicant may become a refugee arose, the fact finding process becomes difficult. As a result, there is the likelihood that legitimate recognition of refugee status may be impaired. Therefore, it is understood that an applicant for refugee status must promptly make the application.

It is rational to understand that “the day he became aware of the fact” in Article 61-2, paragraph 2 of the Immigration Control and Refugee Recognition Act is the day when he became aware that he has fear of being persecuted, and also aware that he is entitled to be recognized as a refugee. (September 26, 1996, Tokyo Higher Court)

- “Unavoidable circumstances” in the proviso of Article 61-2, paragraph 2 means the circumstances where an applicant intended to apply for refugee status within 60 days but could not appear at an immigration control office due to objective circumstances such as sickness or unavailability of transportation. Also, it is reasonable to understand that special circumstances, where an applicant had difficulty deciding whether to apply for refugee status, are included in such unavoidable circumstances. For example, although an applicant wished to be recognized as a refugee in a third country and thus proceeded with the application for entry to the third country, his application was denied. Meanwhile, the time limit of 60 days had already passed or approached. In this case, if the applicant made an application within a reasonable period, which may be the time elapsed from when his entry application had been denied by the third country to the time when he applied for refugee status in Japan, these circumstances should be interpreted as “unavoidable circumstances.”

... the Refugee Convention and Protocol do not provide for special regulations with regard to the procedures for recognition of refugee status, and the procedures are up to the judicial discretion of each Contracting State and each Contracting State may stipulate the procedures in accordance with each domestic situation. Article 61-2, paragraph 2 of the Immigration Control and Refugee Recognition Act provides for the time limit for application for refugee status. This is because, if a person applies for refugee status long after the day the circumstances in connection with which he may become a refugee arose, to find the facts related to the circumstances becomes extremely difficult and thus due recognition of refugee status might not be available. Therefore, it is understood that the time limit for application is aimed at conducting legitimate and smooth administration for recognition of refugee status.

In light of the aforementioned purpose of the time limit, it should be recognized that the provision of paragraph 2 is rational and valid. (February 28, 1994, Tokyo District Court)

- Because the appellant has already been expelled from Japan under a written deportation order, he is no longer in a position to apply for recognition as a refugee. Therefore, his appeal to revoke the denial of refugee status is meaningless, and the judgment at the lower court which made the same judgment as this court can be supported. (July 12, 1996, Supreme Court)

## **Article 61-2-2 Withdrawal of Recognition of Refugee Status**

1. “One of the Articles 1, C-(1) through (6) of the Refugee Convention” in paragraph 1, item 1 means the situation in which the person concerned no longer needs protection as a refugee because the eligibility to be a refugee has been lost; for example, the case in which the person recognized as a refugee voluntarily re-avails himself of the protection of his home country as a national of the home country or the case in which he obtains a new nationality and avails himself of the protection of the country of his new nationality.

“The alien has taken an action in the Article 1, F-(a) or (c) of the Refugee Convention after being recognized as a refugee” in paragraph 1, item 2 means the case in which the person concerned is no longer considered to deserve protection as a refugee; for example, the case in which he has committed a crime against peace.

2. The withdrawal provided for in this Article is to revoke the effect of recognition of refugee status for the future, based on facts having arisen after refugee status was recognized. Thus, the withdrawal is to be made after having learned the facts. Furthermore, in a case where it has been later found that a person recognized as a refugee falls under Article 1, F of the Refugee Convention in the period before his application for refugee status or that fear of being persecuted did not originally exist, refugee status shall be withdrawn according to general rules with regard to a defective administrative act, and the effect of the withdrawal is retroactive.

## **Article 61-2-3 Inquiry of the Facts**

1. Whether or not to recognize refugee status is to be determined based on supporting documents provided by the alien concerned, and the burden of proof lies on the alien concerned who has submitted an application for refugee status (see commentary 1 in Article 61-2). However, persons having fled from persecution may often not be able to prove fully their eligibility for refugee status because of lack of evidence, psychological instability, language barriers, etc. If all such applications are immediately to be rejected on account of insufficient proof of their eligibility for refugee status, appropriate recognition of refugee status may not be ensured. Therefore, in such cases it is desirable to inquire into the facts provided by the applicant ex officio, and to offer him a new opportunity to prove the facts if necessary. Also, once an applicant is recognized as a refugee under this Act, the requirements for permission of permanent residence shall be loosened (Article 61-2-5), a Refugee Travel Document shall be issued (Article 61-2-6), and the Minister of Justice shall make a favorable decision to give the applicant special permission to stay. In addition, the applicant shall enjoy various protections offered by the relevant ministries and agencies, which accept the decision of recognition by the Minister of Justice. Given these advantages, it is crucial that the authorities thoroughly inquire into and substantiate an applicant’s statement and supporting documents to prevent a mistake such that a person ineligible for refugee status is recognized as a refugee. Furthermore, it is required to inquire into whether an applicant falls under one of the exclusion causes in Article 1, F of the Refugee Convention.

On the other hand, once a person has had refugee status withdrawn, he shall lose not only the advantages under this Act, such as special rules to loosen requirements for permission of permanent residence and issuance of a Refugee Travel Document, but also various protections provided by the relevant ministries and agencies. Therefore, with regard to withdrawal of refugee

status, it is essential to inquire fully into whether the person concerned falls under one of the cessation clauses in Article 1, C of the Refugee Convention, and to offer him an opportunity to defend his claim if necessary.

Given the aforementioned disadvantages as a result of withdrawal of refugee status, the purpose of this Article is to guarantee legitimate recognition or withdrawal of refugee status by offering an applicant for refugee status a full opportunity to prove his eligibility for refugee status and also by inquiring thoroughly into the facts provided by an applicant or a refugee to prevent erroneous recognition or withdrawal of refugee status.

2. Methods of inquiry of facts, besides the method provided for in this Article, are to request an applicant to make an appearance and to answer questions, or to give him an opportunity to defend his claim. Seeking professional opinions with regard to inspections and specialized matters shall be also employed.

3. A refugee inquirer mainly makes inquiries into the facts, but the Minister of Justice may also make inquiries to public offices or to public or private organizations as provided for in paragraph 3.

#### **Article 61-2-4 Filing of Objection**

1. As an appeal due to dissatisfaction with a decision on recognition of refugee status cannot be made under the Administrative Objection Examination Act, filing of an objection against the decision can be made under this Article.

2. The time limit for the filing of an objection under this Article is within 7 days after the date of the receipt of the notice concerned, while the time limit for making an appeal under the Administrative Objection Examination Act is within 60 days (Article 45 of the said Act). This is due to the consideration that a decision concerning recognition of refugee status should be made promptly and that an applicant is in a position to know the most about whether he is a refugee or not. Given this consideration, the time limit for filing an objection is within 7 days.

#### **Article 61-2-5 Special Rules on Permanent Residence Permit for Refugees**

The provision of Article 22, paragraph 2 requires, as a prerequisite of a permanent residence permit, good behavior and conduct (item 1) and sufficient assets or an ability to make an independent living (item 2). However, in consideration that many refugees may be unable to be granted a permanent residence permit if they have to fulfill the requirement of item 2, requirements on sufficient assets or the ability to make an independent living is exempted from a person recognized as a refugee in the application for a permanent residence permit so that such a person can be given a more stable status of residence in Japan.

#### **Article 61-2-6 Refugee Travel Document**

1. This Article corresponds to the provisions of Article 28 and the Schedule of the Refugee Convention (referred as “the Schedule” hereinafter). This Article is based on the consideration of

convenience for refugees because a refugee cannot obtain a travel document such as a passport in his home country or a country of his habitual residence, and most countries require aliens to carry a travel document such as a passport for their immigration control.

Paragraph 1 provides that the Minister of Justice shall issue a Refugee Travel Document to a person who has been recognized as a refugee and is living in Japan so that he can travel overseas. A Refugee Travel Document is different from a re-entry permit and similar to a so-called alien's passport. The document is recognized by Contracting States to the Refugee Convention as a valid travel document. A visa shall be affixed on a Refugee Travel Document if a visa is required for a refugee's entry.

According to the purpose of a refugee's travel, etc., in a case where his travel may harm Japan's diplomatic interests to a great extent, it is understood that "there is a possibility of the person committing acts detrimental to the interests and security of Japan." If a refugee agitates, instigates and participates in the acts detrimental to Japan's security outside Japan, it is also included in the above mentioned situation.

2. Paragraph 3 corresponds to paragraph 13, item 1 of the Schedule. If it is deemed particularly necessary, the period of validity for entry into Japan with the Refugee Travel Document may be designated between over 3 months and 1 year (Article 61-2-6, paragraph 4). This corresponds to paragraph 13, item 3 of the Schedule. "If the Minister of Justice deems it necessary" corresponds to the provision in paragraph 13, item 3 of the Schedule; "in exceptional cases, or in a case where the refugee's stay is authorized for a specific period." These cases include the situation where the period of stay in Japan is less than 1 year, and the situation where it is predicted that, even though the person concerned may not cause problems severe enough to be refused an issuance of a Refugee Travel Document, he may engage in acts detrimental to Japan if permitted to stay overseas for a long period.

Also, a person having been issued a Refugee Travel Document is exempted from a visa requirement if he intends to land in Japan (proviso of Article 6, paragraph 1), and he is not required to be newly assessed for status of residence and period of stay when a stamp of landing permission is affixed on his Refugee Travel Document (proviso of Article 9, paragraph 3).

Furthermore, as a Refugee Travel Document per se has the same effect as re-entry permission, when a refugee in possession of the document departs from Japan with the intention of re-entering Japan, he is not required to obtain re-entry permission.

3. In a case where a person who departed from Japan with a Refugee Travel Document has reasonable grounds for not being able to enter Japan within the valid term of the document, the valid term of the document may be extended by a period not to exceed 6 months (Article 61-2-6, paragraph 5), and the administrative work shall be entrusted to a Japanese Consular Officer, etc. (Article 61-2-6, paragraph 6). These provisions correspond to paragraph 6, item 2 of the Schedule. "Reasonable grounds" means sickness making it impossible to travel, unavailability of transportation, etc., similar to the situations in the provision of extension of re-entry permission (Article 26, paragraph 4).

4. An order to return a Refugee Travel Document under paragraph 7 and invalidation of the document under paragraph 8 are not based on an express provision under the Refugee Convention. However, Article 28, paragraph 1 of the Refugee Convention provides that the issuing of a Refugee Travel Document is not necessary in a case where there are compelling

reasons of national security or public order. The aforementioned two paragraphs correspond to this provision under the Refugee Convention. It is natural that there is no need to facilitate overseas travel with a Refugee Travel Document for the convenience of a person concerned, if that person may engage in acts detrimental to the interests or security of Japan. Meanwhile, it is provided that a person who has been issued a Refugee Travel Document must return the document only while he is in Japan. In consideration that there are countries which accept a Refugee Travel Document issued by Japan and thus permit the person in possession of the document entry or residence within their territory according to paragraph 7 of the Schedule, paragraphs 7 and 8 exist so that Japan does not betray the trust of these countries.

#### **Article 61-2-7 Return of Certificate of Refugee Status, etc. following issuance of Deportation Order**

This Article provides that a person having been issued a written deportation order should return his Certificate of Recognition of Refugee Status, etc. because the issuance means that his stay in Japan is to be denied and he is to be deported from Japan.

#### **Article 61-2-8 Special Case of Decision of the Minister of Justice Concerning Refugees**

In a case where an alien having been recognized as a refugee falls under one of the deportable causes and has filed an objection against the deportation procedures issued to him, even though the Minister of Justice finds that the objection filed is not well-grounded, the Minister may grant him special permission to stay.

### **CHAPTER VIII MISCELLANEOUS PROVISIONS**

#### **Article 61-3 Immigration Inspector**

1. An immigration inspector is assigned to a branch and a local office of a regional immigration bureau, and a local office of such a branch.
2. Functions of officers selected from among immigration inspectors as provided for in paragraph 2 are as follows; a hearing concerning landings and deportation (item 1), which is conducted by a special inquiry officer (see commentaries in Articles 10 and 48); an issuance of written detention orders or written deportation orders (item 2) and provisional release of detainees, which are conducted by a director of an immigration detention center or a supervising immigration inspector (see commentaries in Articles 39, 43, 47, 48, 49 and 54), and inquiries into facts concerning recognition of refugees, which are conducted by a refugee inquirer (see commentaries in Article 61-2-3).
3. “The area over which the Regional Immigration Bureau exercises its jurisdiction” is stipulated in Schedule 6 of the Ministry of Justice Establishment Act.



### **Article 61-3-2 Immigration Control Officer**

1. An immigration Control Officer is assigned to a branch and a local office of a regional immigration bureau, and a local office of such a branch, similar to an immigration inspector.
2. “Cases of violation of the provisions of laws and ordinances” in paragraph 2, item 1 means cases that fall under one of the deportable causes provided for in each item of Article 24.
3. As position classification of immigration control officers has not been decided yet in accordance with the Law concerning the Position Classification Plan for the National Public Service, the ranks are classified by the Rank Order of Immigration Control Officers into 7 positions; an enforcement supervisor, a chief enforcement officer, a chief immigration control officer, an immigration control officer, an assistant immigration control officer, a chief guard and a guard.

### **Article 61-4 Carrying and Use of Weapons**

1. A small pistol is prepared as a weapon as provided for in paragraph 1.
2. Paragraph 2 provides for strict requirements concerning the use of weapons so that an immigration inspector or an immigration control officer does not use the weapons based on their arbitrary judgment.

### **Article 61-5 Uniform and Identification Card**

### **Article 61-6 Detention House**

<Reference>

A detention house is a place to detain aliens who were issued a written detention order or a written deportation order under the Immigration Control and Refugee Recognition Act.

### **Article 61-7 Treatment of Detainee**

Although freedom of communication and secrecy of communication are guaranteed under the Constitution (Article 22, paragraph 2), they are not absolute rights. When censorship is conducted to maintain detention as part of the administrative acts, it is necessary for security in the detention center or house and should be interpreted as a reasonable restriction. On this account, such censorship does not violate the Constitution. In order to conduct proper treatment of a detainee under the provision of paragraph 6, the Regulation on the Treatment of a Detainee is provided.

## **Article 61-8 Cooperation of Other Administrative Organs Concerned**

1. “The internal bureau of the Ministry of Justice as may be prescribed by the Cabinet Order” means an immigration bureau.
2. “The necessary cooperation” is to provide the Ministry of Justice information, etc. on aliens. Specifically, this means reporting, etc. on aliens who are illegally working in Japan. However, under the Immigration Control and Refugee Recognition Act and other laws and ordinances, these administrative organs may not take any actions related to compulsory measures unless specified provisions exist.
3. “(Any administrative organ concerned ...) shall comply with the request” means that any administrative organ should cooperate with the Ministry of Justice to the extent that such cooperation will not interfere with the performance of its primary function.

## **Article 61-9 Basic Plan for Immigration Control**

1. As the number of aliens having entered Japan has drastically increased and also their activities have become more and more diversified, aliens’ entry and their residence in Japan have had a greater impact on Japanese people’s living and economy. Thus, it is now necessary to comprehensively analyze the relations between two factors; aliens’ entry into and residence in Japan, and Japanese people’s living and economy, and to decide on Japan’s fundamental approach concerning principles and policies on the control of entry and residence of aliens while seeking harmonious coordination with other administrative organs concerned.

Therefore, under this Article, the Minister of Justice shall, referring to opinions of those in various fields in Japan, formulate the Basic Plan for Immigration Control in consultation with the heads of other administrative organs concerned and announce the plan for the purpose of conducting more appropriate control of entry and residence of aliens.

2. The following matters are provided for in the Basic Plan for Immigration Control;

2-1. “Matters relating to the situation of an alien entering into and residing in Japan” means the latest features, the future possibilities and the problems of such a situation;

2-2. “Matters relating to guidelines for the control of entry and residence of an alien” means the direction of policies concerning the control of entry and residence of aliens according to the current immigration situation and other related circumstances.

2-3. “Matters necessary for implementation of the control of entry and residence of an alien, other than those included in the preceding two paragraphs” means the matters which are relating to the matters in 2-1 and 2-2 and those that are also necessary for implementation of the control of entry and residence of aliens.

3. The provision of paragraph 3 is because the circumstances surrounding Japan’s recent immigration control administration sometimes have impact on other administrative organs concerned and it is thus necessary for the policies of immigration control to be harmonized with those of these organs.

4. Paragraph 4 provides that the outline of the Basic Plan for Immigration Control should be announced “without delay.” This is because it is necessary to have the Japanese people

understand the basic policies of Japan's immigration control so that the authorities can conduct the administration of immigration control properly, given that entry and residence of aliens influence the lives of the Japanese people.

5. In the case of "the modification of the Basic Plan for Immigration Control," consultation with the heads of relevant administrative organs and the announcement of the outline of the Basic Plan for Immigration Control should also be made.

6. The Basic Plan for Immigration Control under this Article was announced on June 8, 1992 through Public Notice no. 319 of the Ministry of Justice.

### **Article 61-10**

Although the Basic Plan of Immigration Control does not have any legal binding, the Minister of Justice shall conduct the administration of immigration control concerning entry, residence, etc. of aliens based on the plan.

### **Article 62 Furnishing of Information**

1. The purpose of this Article is, similar to Article 239, paragraph 2 of the Code of Criminal Procedure, to relax to a certain extent a duty of confidentiality imposed on public servants under Article 100 of the Law of Government Officials and Article 34 of the Law of Officials of Local Public Entities.

Although information should be furnished, orally or in writing, to a competent immigration inspector or immigration control officer under this Article (paragraph 5), in a case where there is no access to a competent immigration inspector or immigration control officer, information should be furnished to the Immigration Bureau of the Ministry of Justice, a regional immigration bureau (including its branch and local office, and a local office of such a branch) or to officials who are working for these offices.

2. While the general public do not have any duty to furnish information under this Article, when any government official comes to know of an alien thought to fall under one of the deportable causes, he has a duty to furnish information on the alien (paragraph 2).

3. Paragraphs 3 and 4 specifically provide for a duty of furnishing of information by a chief of a correction institution and by a district offenders rehabilitation commission. Considering that people belonging to these organizations are in a position to detain, guide and supervise those such as criminals and prostitutes, the above two paragraphs expressly provide that they have the duty of furnishing the information on an alien thought to fall under one of the deportable causes when he/she is released due to expiration of term, suspension of execution of sentence, release from a reformatory or completion of guidance.

### **Article 63 Relation to Criminal Procedure**

1. The procedures provided for by laws and ordinances relating to a criminal suit in paragraph 1 means physical detention such as detention under Articles 60 and 207 of the Code of Criminal

Procedure, arrest under Articles 199, 210 and 213 of the said Code and protective detention of a juvenile, etc. under Article 17 of the Juvenile Law. The case in which the person concerned has been released on bail is not included in the above procedures.

The procedures provided for by laws and ordinances relating to execution of sentence mean execution of imprisonment with or without labor or physical detention, penal detention of those sentenced to death, and physical detention at a labor house in lieu of a penalty or minor fine. The case in which the person concerned has been released on parole is not included in the above procedures (see Article 62, paragraph 4 and Article 64, paragraph 2).

The procedures provided for by laws and ordinances relating to the treatment of inmates of a reformatory guidance house mean physical detention of those who have been detained in such a house as a protective disposition of a juvenile under the Juvenile Law.

The procedures provided for by laws and ordinances relating to the treatment of the inmates of a women's guidance home mean physical detention of those who have been detained in such a house as a guidance disposition under the Anti-Prostitution Law.

When the criminal procedures, etc. "are carried out" means when such procedures are ongoing, that is, the situation where a person has been already detained.

This paragraph provides that, in a case where a suspect is detained under the criminal procedures, the deportation procedures against the suspect will proceed without detention. This is the only exception to the policy of detention-first (the detention-in-principle policy), and at the same time, this is one of the grounds for such a policy under laws and ordinances.

3. Paragraph 2 provides that, in a case where a written deportation order has been issued in the process of the deportation procedures under the provision of paragraph 1, the order shall be effected after the physical detention under the criminal procedures is completed except for the cases in the proviso. "The execution of a written deportation order" means deportation and detention for the deportation under the order as provided for in Article 52.

4. The significance of paragraph 3 lies in that not an immigration control officer but an immigration inspector has a duty of filing an accusation. Article 239, paragraph 2 of the Code of Criminal Procedure provides that "any government or public entities' official shall, when he considers that there exists an offense in the course of the performance of his duties, file an accusation." Since an immigration inspector is also a government official, besides the provision of paragraph 3, he has such a duty under the aforementioned provision of the Code of Criminal Procedure. The reason for restating this duty under paragraph 3 is related to paragraphs 1 and 2 of this Article. As aforementioned, the deportation procedures proceed regardless of whether or not the alien concerned is suspected to be a criminal unless he is detained under the criminal procedures. Meanwhile, while it is undetermined whether the alien concerned shall be deported or not at the stage of an investigation of violation by an immigration control officer, the decision on deportation becomes nearly final at the stage of an examination by an immigration inspector. Therefore, paragraph 3 intends to have an immigration inspector accuse the alien concerned who is to be deported. Taking into account the timing when the Immigration Control and Refugee Recognition Act and the Code of Criminal Procedure were enacted, the nature and structure of the deportation procedures, and also the provision of Article 65, the purport of an immigration inspector's duty of filing an accusation against a deportable alien can be interpreted as mentioned above.

<Relevant Decisions by Courts>

- The purpose of Article 63, paragraph 1 of the Immigration Control Order is to authorize the process of the deportation procedures until the issuance of a written deportation order against the person actually detained under the criminal procedures in the process provided for in the Code of Criminal Procedure or the said Article. “The procedures provided for by laws and ordinances relating to a criminal suit” in paragraph 2 of the said Article is to be interpreted to mean only the process of physical detention within the criminal procedures. (December 25, 1954, Yokohama District Court)

- The first half of paragraph 1 of Article 63 of the Immigration Control Order provides that the deportation procedures may be proceeded with until the issuance of a written deportation order in a case where the deportable alien concerned is physically detained under the procedures provided for by laws and ordinances relating to a criminal suit and also by the provision of the said Article.

Paragraph 2 of the said Article provides that, with the understanding that a written deportation order against the person under physical detention in the criminal procedures cannot be executed, the execution of a written deportation order should be suspended until the person concerned is released after the completion of the criminal procedures against him. Even though a criminal case is not completed, as long as the suspect in the case has been released on parole, the execution of a written deportation order against him does not violate Article 63, paragraph 2 of the said Act.

The detention as a step to the execution of a written deportation order takes place separately from the criminal procedures. Thus, even if the execution of detention under a written deportation order may cause hindrances in the process of defense of the activities of the suspect as well as of the exercise of his rights in relation to his criminal case, such detention cannot be claimed to be illegal. (October 9, 1974, Sendai District Court)

- Paragraphs 2 and 3 of Article 63 of the Immigration Control and Refugee Recognition Act stipulate that, in a case where a suspect is physically detained under the Code of Criminal procedure, even though the criminal procedures are not completed, or even though the detention procedures under a written detention order according to the said Act have not been initiated, the deportation procedures can proceed to the issuance of a written deportation order with physical detention under the criminal procedures as a substitute for detention under the deportation procedures. The provisions of paragraphs 2 and 3 clarify that the criminal procedures and the deportation procedures may be simultaneously processed until the issuance of a written deportation order, and also that physical detention under the criminal procedures is in principle given a priority over the execution of a written deportation order since the execution of a written deportation order may be effected only after the criminal procedures are completed and thus the suspect has been released from physical detention.

“The procedures ... relating to a criminal suit” in Article 63 of the said Act means the procedures relating to physical detention. (September 14, 1995, Fukuoka District Court)

- In a case where the procedures specified by laws and ordinances relating to a criminal suit are being taken, an immigration control officer cannot complete the deportation procedures by deporting the person concerned, even if the execution of a written deportation order has been initiated. (December 2, 1976, Tokyo District Court)

## **Article 64 Delivery of the Suspect**

1. Paragraph 1 concerns the case in which a public prosecutor has kept a suspect under detention on account of the crime stipulated in Article 70. The case of a suspect who has not been kept under detention in the process of the criminal procedures is not applicable to this paragraph. The purpose of paragraph 1 is to facilitate the smooth transition from the criminal procedures to the deportation procedures, as those who have committed a crime stipulated in Article 70 fall under one of the deportable causes except item 9 and thus are subject to being deported from Japan.
2. Paragraph 2 has the same purpose as that of paragraph 1, and requests the cooperation of a chief of a correction institution, etc. in order to facilitate the smooth transition from the execution of sentence to the deportation procedures.
3. Those who have been delivered to an immigration control officer under this Article can be processed through the deportation procedures including deportation per se even though they are under provisional release.

## **Article 65 Exception to Code of Criminal Procedure**

1. This Article provides for an exception to the Code of Criminal procedure. Under the Code of Criminal Procedure, when a judicial police officer has arrested or taken delivery of a suspect, he should deliver the suspect to a public prosecutor within 48 hours after the suspect has been put under physical detention (Articles 203, 211 and 216). Even if a suspect has been released before such delivery, the case itself should be taken over by a public prosecutor (Article 246 of the said Code).
2. The penal provision under Article 70 is to guarantee the basic order of immigration control, and stipulates the same offenses as deportable causes except item 9. An exception to the Code of Criminal Procedures shall be effected in a case where an alien having committed one of the offenses under Article 70 is not suspected of any other criminal offense because it is recognized that prompt deportation of such an alien may contribute more to national interests than pursuit of his criminal procedures.
3. “A judicial police officer” means a police officer empowered to request a warrant, to receive a complaint, an accusation and a self-surrender, to deliver a case to a public prosecutor and to conduct an autopsy. Judicial police officers are to be assigned from among police officers in the National Police Agency or district police bureaus who are more senior than a police sergeant in accordance with the regulations of the National Public Safety Commission. The same system is applicable in prefectural police headquarters.
4. The application of this Article requires the issuance of a written detention order. An immigration control officer, who has received a suspect, should deliver the suspect to an immigration inspector within 48 hours after the suspect has been put under physical detention under a written detention order according to the provision of Article 44. After the delivery of the suspect from the immigration control officer, the immigration inspector shall proceed to an investigation of violation as usual.

## **Article 66 Reward for Providing Information**

The amount of the reward under this Article is set between 1,000 yen and 50,000 yen under Article 60 of the Regulation under the Act. It should be interpreted as natural that, in a case where a government official on duty comes to know the fact that the alien concerned falls under one of the deportable causes, such a reward shall be not given to the official in light of the purpose of Article 62, paragraph 2 (a government official's duty of furnishing information).

## **Article 67 Fees**

As for permission mentioned in each item of this Article, the fees to be paid for permissions for change of status of residence, extension of period of stay, permanent residence, and re-entry permission are stipulated by the Cabinet Order on Fees to be paid in relation to the Immigration Control and Refugee Recognition Act, as 4,000 yen for permission of change of status of residence, 4,000 yen for permission of extension of period of stay, 8,000 yen for permission of permanent residence, 3,000 yen for re-entry permission (excluding multiple re-entry permission) and 6,000 yen for permission of multiple re-entry permission. Article 61 of the Regulation under the Act provides that these fees should be paid with a revenue stamp equivalent to each fee.

The fees to be paid for extension of validity of re-entry permission where the administrative procedures are entrusted to a consular officer, etc. is to be set by the Ministry of Foreign Affairs Ordinance, which was established under "the Cabinet Order on the Fees to be paid to the Consular Officer," with the local currency where a consular office is located. The amount should be set between 1,900 yen and 4,100 yen, which is to be paid in local currency. Under "the Ministerial Ordinance on the Amounts of Fees to be paid to the Consular Officer," the fee for extension of validity of re-entry permission is set at around 3,000 yen in local currency.

## **Article 67-2**

1. A Certificate of Authorization for Employment is to be issued mainly for the convenience of aliens based on their request. Since the issuance of the certificate costs labor, the paper of the certificate and so forth, the fee for the issuance shall be charged to fill such actual costs.
2. "A fee in the amount provided for by the separate Cabinet Order" is 680 yen under item 6 of the Cabinet Order on Fees to be paid in relation to the Immigration Control and Refugee Recognition Act.

## **Article 68**

This Article provides for the fees for the issuance of a Refugee Travel Certificate and for an extension of the period of its validity.

The fee for the issuance of a Refugee Travel Certificate is set at 5,000 yen by the Cabinet Order on Fees to be paid in relation to the Immigration Control and Refugee Recognition Act. The fee

for an extension of a Refugee Travel Certificate where the administrative procedures are entrusted to a consular officer, etc. is similar to the fee for an extension of the period of validity of re-entry permission, and is to be set by the Ministry of Foreign Affairs Ordinance which was established under “the Cabinet Order on the Fees to be paid to the Consular Officer” in the local currency where a consular office is located. The amount should be set between 1,600 yen and 3,400 yen, which is to be paid in local currency. Under the Ministerial Ordinance on the Amounts of Fees to be paid to the Consular Officer, the fee shall be set at around 2,500 yen in local currency.

#### **Article 69 Entrustment to the Ministerial Ordinance**

The Ministry of Justice Ordinance, which prescribes the procedures for the implementation of this Act and other matters necessary for the execution thereof, includes the Regulation under the Act, the Criteria provided for by the Ministry of Justice Ordinance, the Regulation on Treatment of Detainees, the Ministry of Justice Ordinance: the form of a stamp by an immigration inspector or an immigration control officer, etc.

#### **Article 69-2 Transitional Provision**

This Article was established by the law to partially amend the Immigration Control and Refugee Recognition Act (law no. 57 of May 8, 1998), and constitutes a mandatory provision which stipulates that in the case of enacting, revising or repealing any order under the provision of the Immigration Control and Refugee Recognition Act, the order may determine necessary transitional provisions insofar as such provisions are reasonably judged necessary for the enactment, revision or repeal of the order.

### **CHAPTER IX PENAL PROVISIONS**

#### **Article 70**

1. Paragraph 1, item 1 is a provision concerning the crime of illegal entry, and provides for a penal provision for illegal entry into Japan in violation of the provision of Article 3.

Item 2 of the said paragraph is a provision concerning the crime of illegal landing and provides for a penal provision for illegal landing in Japan without undergoing the regular landing procedures (see the commentary of Article 24, item 2).

Item 4 of the said paragraph provides for a penal provision for working activities in which an alien, who has status of residence stipulated in the Annexed Table I, has been engaged without obtaining permission in activities outside qualifications. “Solely” and “clearly” are key words for this offense and distinguish this crime from the one of Article 73 (see the commentary of Article 24, item 4, sub-item (a)).

Item 5 of the said paragraph is a provision concerning the crime of illegal stay, and prescribes a penal provision for overstaying in Japan beyond the period of stay authorized under his status of residence. In a case where an alien has obtained permission for landing by deceiving an



immigration inspector with a forged passport and thus stays in Japan, the action of the alien concerned constitutes the crime under item 1 or paragraph 2 but not under item 5.

Item 6 of the said paragraph prescribes a penal provision for the crime that an alien escaped from or failed to appear at a summons without justifiable reasons in violation of the conditions imposed when he was granted permission for provisional landing.

Item 7 of the said paragraph provides for a penal provision for illegal stay beyond the period of stay authorized under landing permission of special cases.

Item 7-2 of the said paragraph prescribes a penal provision for the action by which a crewman whose multiple landing permission for a crewman was revoked did not return to his vessel or leave Japan within the designated period of stay in Japan.

Item 8 of the said paragraph prescribes a penal provision for illegal stay by which any person who has renounced Japanese nationality or any alien who may stay in Japan without following the procedures for landing by birth or for any other cause continues to stay in Japan beyond the period of 60 days, which is authorized to such a person under his status of residence.

Item 9 of the said paragraph prescribes a penal provision for the action by which an alien had himself recognized as a refugee by making a false statement or by other dishonest means.

2. Paragraph 2 is a provision concerning the crime of overstaying, which was newly established by the law to amend partially the Immigration Control and Refugee Recognition Act in 1999, and provides for a penal provision for the action by which a person having entered into or landed in Japan illegally continues to stay in Japan without his status being legalized. As far as his status of residence remains illegal, it is recognized that the penal provision continues to be applicable to him.

#### <Relevant Decisions by Courts>

- The crime of illegal entry against Article 3 of the Immigration Control Order is initiated and completed at the very moment that an alien not possessing Japanese nationality has intentionally entered the territory of Japan without a valid passport or crewman's pocket-ledger. (April 25, 1959, Fukuoka District Court)

- In a case where an alien, who was ordered to be deported once, has illegally re-entered Japan, the crime of illegal entry shall be effected. (March 14, 1953, Tokyo Higher Court)

- In order to prove the crime of aiding illegal entry by the delivery of a forged crewman's pocket-ledger, it should be proved that the holder of such a forged document could enter Japan easily because he had such a document. (March 29, 1957, Fukuoka Higher Court)

- In a case where an illegal entrant has departed illegally, he shall be punished for crimes of both illegal entry and departure. (December 6, 1954, Fukuoka Higher Court)

- In a case where an alien departed from Japan without going through the due departure procedures and then entered Japan without the due entry procedures, he has committed two crimes; illegal departure and entry, and is subject to being punished for both crimes. (October 30, 1960, Tokyo Higher Court)

- In a case where an alien illegally entered and smuggled goods into Japan, he is subject to being

punished for two crimes; illegal entry and smuggling. (May 1, 1962, Supreme Court)

- In a case where a Soviet official vessel, excluding its warships, has utterly ignored the Japanese domestic law and entered the territory of Japan without any government official business, its extraterritorial rights should be not accepted. A Japanese court has jurisdiction in trying such a Soviet illegal entrant who entered Japan by a Soviet vessel with the crime of illegal entry. (February 19, 1954, Asahikawa District Court)

- As the indictment states; (1) that the defendant is a South Korean, (2) that he landed in Japan not as a person to whom applies the special mention of Article 3 of the Immigration Control Order, and (3) that he landed in Japan around January 1952, even though the location of his landing is not clarified, it can be said that he shall be subject to being prosecuted in violation of Article 3 of the Immigration Control Order. (May 9, 1955, Osaka Higher Court)

- As a proof supporting the confession by the defendant on his illegal entry, the evidence that he is believed to have not been in Japan is sufficient. (July 22, 1953, Supreme Court)

- The person concerned applied for an extension of his period of stay, but was notified of the denial of his application after the authorized period of stay had expired. Despite the above-mentioned notification, he had continued to stay in Japan and therefore he was detained on account of overstaying. Under these circumstances, he shall be punished under Article 70, item 5 of the Immigration Control Order for his overstaying for the period from the notification of denial of his application for the extension of period of stay to the detention. (October 2, 1970, Supreme Court)

- In a case where a notification of denial of the applicant's application for an extension of period of stay was not delivered to him because he was hiding himself, the crime of illegal stay shall be effected from the date of the delivery of the notification issued by the Immigration Bureau. (February 16, 1988, Osaka Higher Court)

- The crime of overstaying, which is provided for in Article 70, item 5 of the Immigration Control and Refugee Recognition Act, should be interpreted as a crime where an entrant into Japan violates Japan's legitimate immigration control. The crime makes the alien, who is overstaying in Japan beyond the designated period of stay, subject to being punished for his illegal action of overstaying. Therefore, the crime is to be effected at the moment when his designated period of stay has expired, and as long as he continues to overstay in Japan, the crime against the said Article should be continuously applicable to him. (May 30, 1990, Osaka Higher Court)

- In a case where an alien given the landing permission of port-of-call under Article 14 of the Immigration Control Order has been staying in Japan beyond the authorized period of stay, he is liable to be punished by virtue of Article 70, item 7 of the said Order for the whole period after the authorized period of stay has expired. (September 26, 1974, Hiroshima Higher Court)

## **Article 70-2**

1. This Article provides for the exemption of penalties in a case of a refugee's illegal entry (Article 70, paragraph 1, item 1), illegal landing (the said Article, paragraph 1, items 2 and 3) or overstaying (the said Article, paragraph 1, items 5 and 7), if the refugee concerned can prove that

he fulfills certain requirements as a refugee. This Article corresponds to Article 31, paragraph 1 of the Refugee Convention, which reads “The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in the territory of the State without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.”

The purpose of this Article is to exempt, from humanitarian considerations, the penalties for illegal entry, illegal landing, overstaying, etc., which has been committed by a refugee who has fled from persecution in a case where he has expressly claimed to be a refugee. However, the purpose of this Article does not mean to prohibit investigation, prosecution or conviction relating to illegal activities which the refugee concerned has committed.

2. The determination “that he is a refugee” under item 1 is to be conducted by a judge or court which tries the criminal case concerned, and the determination affects only whether the person concerned shall be exempted as a refugee from the penalties for the case. The determination does not substitute determination by the Minister of Justice, which is provided for in Article 61-2, and does not have any impact on government organizations such as administrative organs.

“As prescribed in Article 1, paragraph A-(2) of the Refugee Convention” in item 2 refers to race, religion, nationality, member of a particular social group or political opinion. “He entered Japan directly” means that the person concerned has come to Japan directly from a territory where his life or freedom was threatened and without availing himself of asylum in a third country. For example, in a case where any person entered Japan after having fled to a third country was accepted to enter the country and then obtained a passport of that country, the above description is not applicable.

“The offense was committed” means the crime concerned, which is provided for in Article 70, paragraph 1, item 1, 2, 5 or 7. Item 3 means that there exists a direct causal relationship between the crime concerned and the fear (of his life being threatened). In short, item 3 states that it is essential that the fear compelled the refugee concerned to commit such a crime. Therefore, even though the person concerned fulfills the requirements mentioned in items 1 and 2 and has committed the crime provided for item 1, 2, 5 or 7 from any reason other than to escape the threat to his life, he cannot be exempted from the penalties.

The burden of proof of fulfilling the requirements mentioned in items 1 through 3 lies in the person seeking the exemption of penalties.

3. In order to be exempted from penalties under this Article, the person concerned should promptly report to an immigration inspector that he falls under items 1 through 3 (the proviso of this Article). Although the Refugee Convention does not specify any agency to report to but only refers to “authorities,” for the purpose of conducting efficient and coherent administration, an immigration inspector should be regarded as appropriate to engage in such a function because he is responsible primarily for immigration control and is also acquainted with the situations of aliens entering and residing in Japan. On this account, in a case where any person mentions to an immigration inspector that he falls under items 1 through 3 after having reporting to a police officer or a maritime safety officer, it can be said that he fulfills this procedural requirement.

“After having committed the offense” means that the person concerned has already effected the offense.

“Prompt” means a duration deemed reasonable to report to the authorities, judging the circumstances under which a person committed the crime concerned, the place where he committed the crime of illegal entry, etc., personal reasons such as health conditions, etc. It is difficult to specify this, but given the geographical situations of Japan, it seems reasonable to assume that any person may appear before an immigration inspector within one week or so after he has committed the crime concerned, unless there exist particular circumstances, such as that he is sick or under physical detention.

4. The purpose of Article 31, paragraph 1 of the Refugee Convention is to prohibit penalties for the crimes of illegal entry, illegal landing or overstaying which have been committed by a refugee. Therefore, in a case where such a refugee has committed any other offense irrelevant to the purpose of the said paragraph, he may be punished. For example, a refugee shall be punished with penalties for a crime against the Alien Registration Act, which is a government administrative action to obtain information on residence and status of aliens residing in Japan.

#### <Relevant Decision by Court>

- Article 70-2 of the Immigration Control and Refugee Recognition Act is a special provision to exempt, separate from the administrative procedures of refugee status recognition, a refugee from the penalties on account of crimes such as illegal entry, etc. although the Article does not deny the crime itself. Considering that the exemption requirements include, besides being a refugee, item 2 of the said Article, the person concerned should submit a report of his eligibility for these requirements before he was arrested or during the investigation. Otherwise, it is reasonable to expect to receive such a report until the judgment of first trial is handed down in his criminal lawsuit. He does not need to submit the report with the knowledge of specific procedures relating to the said Article or on legal aspects. He only has to report, at least, specific facts as to the grounds for which he fulfills the requirement provided for in Article 70-2, item 1 or 3 of the said Act. Therefore, even though he is under physical detention due to the judicial procedures, it may be possible for him to mention the facts to the investigating authorities or to his lawyer or to ask them to have him report to an immigration inspector, and thus it cannot be denied that he has such an opportunity. Yet, even though a considerable time has passed before he has reported to an immigration inspector, as long as unavoidable circumstances exist, it should be judged whether a “prompt” report has been submitted or not, in consideration of the circumstances. (July 1, 1993, Osaka Higher Court)

## **Article 71**

#### <Relevant Decisions by Courts>

- Under the circumstances in which an illegal departure has been planned in detail, in which the persons concerned have gathered together at a place designated by the plan and in which they are assumed to have departed immediately if the ship was available then, they shall fall under Article 71 of the Immigration Control Order as “a person who attempted to depart from Japan”. (December 8, 1952, Hiroshima Higher Court)

- The provision of Article 25, paragraph 2 of the Immigration Control Order is applicable to all aliens in Japan, regardless of whether they entered Japan legally or illegally. (July 9, 1957,

Supreme Court)

- Knowing that it is illegal, to help someone prepare for an attempt to depart illegally is a punishable offense. (January 22, 1963, Osaka Higher Court)
- The provision of Article 71 of the Immigration Control Order, which stipulates the same penalty against illegal departure, does not violate the provision of Article 31 of the Constitution. (April 26, 1973, Tokyo Higher Court)
- The provisions of Article 25, paragraph 2 and Article 71 of the Immigration Control Order are applicable to the alien in Japan whose nationality is North Korean. These provisions do not violate the provisions of Article 14, Article 22, paragraph 2 and Article 31 of the Constitution. (April 27, 1978, Osaka Higher Court)

## **Article 72**

<Relevant Decision by Court>

- In a case where an alien, who was detained legally under a written deportation order, has fled from detention, he shall be punished with the crime stipulated in Article 72, item 1 of the Immigration Control Order, regardless of his nationality. (May 13, 1958, Nagasaki District Court)

## **Article 73**

1. This Article stipulates a penal provision for a person who has engaged in activities involving the management of a business involving income or other activities for which he receives remuneration in violation of the provision of Article 19, paragraph 1. This excludes a violator who has engaged solely in activities outside qualifications, namely, a violator who falls under Article 70, paragraph 1, item 4.
2. The description of “except for cases to which the provisions of Article 70, paragraph 1, item (4)” intends to exclude a person who is clearly found to engage “solely” in activities involving the management of a business involving the income or other activities for which he receives remuneration in violation of the provision of Article 19, paragraph 1. This is to cover the situation where a person has not been engaged solely in such activities and thus light punishment is sufficient.

## **Article 73-2**

1. It is feared that aliens engaging in illegal work not only disturb the basis of the order of Japan’s immigration control, but also cause various problems such as negative impacts on socio-economic order and on human rights as well as the increasing racial discrimination against foreign workers in Japan. Thus, it is imperative for Japan to aim at terminating the problem of illegal workers. This Article stipulates a penal provision particularly against acts such as employment or mediation of illegal workers, which seems to promote or to attract aliens engaging in illegal work from overseas.

2-1. “In relation to business activities” in item 1 means “in relation to activities necessary for the person concerned to continue the business in which he operates or engages.” Therefore, in a case where a person has an alien work illegally at his home as a housekeeping employee, item 1 is not applicable to the person concerned. However, it is likely that he may be punished for the crime of aiding illegal work by an alien in violation of Article 70 (activity outside qualifications).

2-2. “Has had an alien engage in” illegal work means that the person concerned took advantage of an alien and actively encouraged the alien to work illegally because he knew that he has power over the alien, and that as a result the alien has engaged in illegal work.

One typical example is that an employer or his employee in a supervising position for other employees employed an alien and has had the alien engage in illegal work. Another example is that both a supplier and a recipient of illegal workers have had aliens engage in illegal work under their supervision.

Whether a workplace or recipient of illegal workers shall be punished under this item depends on how actively he has been involved in “having aliens engage in” illegal work. If he has had aliens engage in illegal work as actively as the employer, he may be punished under this item. Otherwise, such a workplace or recipient constitutes aiding the violation of this item.

“Has had an alien engage in” does not include the situation where an illegal worker and his counterpart have equal power.

3-1. “For the purpose of having the alien engage in illegal work” in item 2 means the situation where the person concerned himself has the intent of having an alien engage in illegal work or where any other person knows that the person concerned has had an alien engage in illegal work.

3-2. “Has placed an alien under his control” means the situation where seemingly a person exercises power over an alien working illegally. In their relationship, he instructs the alien and the alien follows his instructions.

For example, if a person offers housing as well as other living necessities to an alien whose Japanese is so limited that his self-sufficiency is limited, it would be psychologically very difficult for the alien to detach himself from such support. This situation can be described as “has placed an alien under his control.”

4-1. “Repeatedly” means “repeatedly and continuously or with the intention to engage in the activities repeatedly and continuously.” Whether the activities are in the form of a business or not, whether the activities are for profit-making, or whether the activities have brought profit is not the issue.

4-2. “Mediation” means to “mediate (help) a certain negotiation between the two persons concerned by request or under agreement between them.” Even though the negotiation has not been agreed to by both parties, as long as the mediator has helped the negotiation to a great extent, it can be said that he has committed the mediation. Whether he has received a fee or not is not under consideration. Different from item 1, item 3 does not stipulate “in relation to business activities.” Therefore, in a case where any person has repeatedly mediated the procurement of an alien working as a housekeeping person for a household, he shall be punished under item 3.

5. The definition of “to engage in illegal work” is as follows, as provided for in item 2 of this Article.

5-1. “Activities which violate the provisions of Article 19, paragraph 1” (activities by those who fall under Article 70, paragraph 1, item 4 and Article 73, namely, activities in which an alien has engaged outside qualifications).

5-2. Activities in which an illegal entrant (Article 70, paragraph 1, item 1) has engaged, and which involve income or other remuneration.

5-3. Activities in which an alien having landed in Japan illegally (Article 70, paragraph 1, items 2 and 3) has engaged, and which involve income or other remuneration.

5-4. Activities in which an overstayer (Article 70, paragraph 1, items 5, 7 and 7-2) has engaged, and which involve income or other remuneration.

#### <Relevant Decisions by Courts>

- The provision of Article 73-2, paragraph 1, item 1 of the Immigration Control and Refugee Recognition Act states “a person who has had an alien engage in illegal work in relation to business activities.” From this description, it cannot be understood that a person with only a certain status shall be punished under this item, although the plaintiff insists on such a limited interpretation of the item. If it has been found that the plaintiff and others have actually had an alien/aliens engage in illegal work, it is reasonable to recognize that they shall be punished under the item. As Article 73-2, paragraph 1, item 1 simply stipulates “has had an alien engage in illegal work”, the plaintiff did not have to be highly predominant over the alien(s) concerned. As far as it has been found that he had exercised power over the alien(s) and thus “had an alien/aliens engage” in illegal work, this item is applicable to him. (September 22, 1993, Tokyo Higher Court)

- Article 73-2, paragraph 1, item 2 of the Immigration Control and Refugee Recognition Act is based on the purport that it is necessary to control not only the illegal work of an alien per se but also any act that attracts and promotes such illegal work with the aim of terminating such illegal acts. Given this purport, it should be recognized that “under his control” in item 2 also includes the situation where the person concerned made an alien/aliens unable to detach himself/themselves from his influences by having psychological or financial impacts on the alien(s) and thus putting him/them under his control. (November 11, 1993, Tokyo Higher Court)

- In a case where a person has had several aliens engage in illegal work for the same business activities, it is reasonable to understand that the crime provided for in Article 73-2, paragraph 1, item 1 is applicable to every alien and that these crimes constitute accumulative crimes. (March 18, 1997, Supreme Court)

#### **Article 74**

1. “The law to amend partially the Immigration Control and Refugee Recognition Act” (“referred to as the amendment law hereinafter) was approved by the 140th Diet on April 25, 1997, was proclaimed on May 1, 1997 (law no. 42), and was enforced from May 11, 1997.

The amendment law newly established five crimes relating to collective stowaways in the provisions from Articles 74 through 74-5. Each crime, involving a broker of collective

stowaways from the point when collective stowaways started to move from overseas towards Japan to the point when they entered and hid themselves in Japan, is independently provided for. The reason for having established provisions for these new crimes is to act against the increasing conspiracies relating to collective stowaways between brokers both in Japan and overseas and Japanese gangsters. In recent incidents involving collective stowaways, the brokers and Japanese gangsters often share a chain of responsibility; recruiting stowaways, transporting them within the country of departure, from the coast in the country to the territory of Japan and then from the vessel having entered the territory of Japan to the landing point in Japan, receiving the stowaways, and transporting them from the landing point to the place where they hide themselves. Unless a provision against the crime of each aforementioned act exists, it would be difficult to ensure an appropriate punishment and to control the recent incidents involving collective stowaways.

2. This Article provides for the crime of having had collective stowaways enter or land in Japan. Under this Article, any person who has had collective stowaways under his control or charge enter Japan or land onto Japan shall be punished with penal servitude of not more than 5 years or a fine of 3 million yen or less, and any person who has committed the aforementioned crime in the pursuit of profit shall be punished with penal servitude of not less than 1 year nor more than 10 years and a fine not exceeding 10 million yen. This Article also provides for the punishment for the attempt to have collective stowaways land.

3. “Collective stowaways” means “aliens in groups who have the intention of landing in Japan without obtaining landing permission, etc. from Immigration Inspectors, or with obtaining landing permission, etc. from Immigration Inspectors by a false representation or other illegal measures”.

“Landing permission, etc.” in the preceding paragraph means “stamping the permission for landing or landing permission” (see Article 3, paragraph 1, item 2). “Stamping the permission for landing” means stamping the permission for normal landing which is provided for in Article 9, paragraph 1, Article 10, paragraph 6 or Article 11, paragraph 4 (which also includes special permission for landing provided for in Article 12, paragraph 2). “Landing permission” means landing permission for special cases which are provided for in Articles 14 through 18-2.

“Without obtaining landing permission, etc. from Immigration Inspectors” means the following cases;

(1) An alien did not obtain landing permission, etc. from an immigration inspector (for example, the case in which an alien came to Japan by a smuggling vessel and landed by stealth in a place which is not designated as an entry or departure port).

(2) Although an alien obtained landing permission, etc. from an immigration inspector, the permission itself is invalid or does not exist because the alien concerned did not meet the formality of the landing procedures provided for by law (for example, the case in which an alien had an immigration inspector endorse by stamping the permission for landing in the alien’s false passport).

(3) Although an alien obtained landing permission, etc. from an immigration inspector, the alien concerned is not the addressee of the permission (for example, the case in which an alien obtained landing permission for a crewman by showing another crewman’s pocket-ledger, etc. to an immigration inspector).



“With obtaining landing permission, etc. from Immigration Inspectors by a false representation or other illegal measures” means that an alien, who is in fact not qualified for the conditions for landing permission, pretends to be qualified for these conditions by presenting false facts or hiding the truth, and thus makes an immigration inspector grant landing permission, etc. by mistake. However, in a case where an alien took illegal measures and thus obtained the landing permission concerned, etc. which is actually invalid or does not exist, as mentioned in the case (2) in the preceding paragraph, the case should be excluded from the aforementioned situation. On the other hand, if an alien obtained the landing permission concerned, etc. which is revocable, it is included in the aforementioned situation. For example, if an alien presents a false certificate of a status of residence and thus obtains a stamp of landing permission in his passport from an immigration inspector, or if an alien actually aiming to work illegally in Japan applies for landing permission with a false statement saying that he would participate in an international contest, these cases are included in the aforementioned situation.

“In group” is the situation where two or more people are gathering in a particular place.

4. “Under his control or charge” is the situation where an actor can have influences on the will and actions of a non-actor (who is a collective stowaway in this situation).

5. “Has had collective stowaways ... enter in Japan or land onto Japan” means that a person independently and actively caused the result of entry or landing of collective stowaways as a proof of his control or charge over these aliens.

One example of this crime is the action of taking collective stowaways on board, transporting them up to the territory of Japan or having them land in Japan, and another is an action of leading the party of collective stowaways, giving them a false passport or a passport with a false stamp of re-entry permission, having them present the passport to an immigration inspector thus having them obtain a stamp of landing permission from the inspector.

## **Article 74-2**

1. This Article provides for a penal provision for transporting collective stowaways toward Japan or for transporting them to a place of landing in the territory of Japan. Under this Article, any person who has transported collective stowaways under his control or charge toward Japan, or who has transported them to a place of landing in the territory of Japan, shall be punished with penal servitude of not more than 3 years or a fine not exceeding 2 million yen, and also any person who has committed any of the preceding crimes in the pursuit of profit shall be punished with penal servitude of not more than 7 years and a fine not exceeding 5 million yen.

2. “Has transported collective stowaways.... toward Japan” means transportation from a place outside Japan to the territory of Japan, and the destination should be somewhere in Japan. Transportation via a third country or a port of call is also included in this case.

3. “Has transported them to the place of landing in the territory of Japan” means, in the case of a vessel, to transport toward the place of landing of the collective stowaways who have entered Japan’s territorial waters or gathered in Japan’s territorial waters. To transport collective stowaways who have been transported from outside Japan’s territorial waters and been received in Japan’s territorial waters is also included in this case. The final destination should be some place of landing in the territory of Japan.

### **Article 74-3**

1. This Article stipulates a penal provision for the crime of preparing or providing a vessel, etc. for the use of transportation of collective stowaways. Under this Article, any person who has prepared a vessel with the intention of committing the crime of Article 74, paragraph 1 or 2, or Article 74-2, shall be punished with penal servitude of not more than 2 years or a fine not exceeding 1 million yen. The same shall be applied to any person who knowingly provided such a vessel.

Among the preparation crimes provided for in Article 74, paragraph 1 or 2, or Article 74-2, noting that the crime of preparation or provision of vessels, etc. for the use of transportation of collective stowaways is likely to damage the legal interest of Japan to a great extent, a penal provision for such a crime is particularly stipulated in the preceding Article.

2. “Prepared” means that a person has purchased or borrowed a vessel, etc. for the purpose of committing the crime provided for in Article 74, paragraph 1 or 2, or Article 74-2 and made the vessel available for the use of such a crime.

3. “Provided” means that any person has lent a vessel, etc. and made the vessel available. “Knowingly” means that a provider of a vessel, etc. knows, at the time when he lends the vessel, that the receiver of the vessel will use the vessel to commit the crime provided in Article 74, paragraph 1 or 2, or Article 74-2.

### **Article 74-4**

1. This Article provides for punishment against the crime of receiving collective stowaways, etc.. Under this Article, any person who has received, from another person who committed the crime of Article 74, paragraph 1 or 2, the aliens landed by this person, or who has transported, harbored or concealed these aliens after having received them shall be punished with penal servitude of not more than 5 years or a fine not exceeding 3 million yen. Likewise, any person who has received the aliens concerned from the person who received them, or who has transported, harbored or concealed them after having received them shall be punished with the same conditions. Furthermore, any person who has committed the aforementioned crimes in the pursuit of profit shall be punished with penal servitude of not less than 1 year nor more than 10 years and a fine not exceeding 10 million yen. Also, this Article stipulates a penal provision for attempting the crime provided for in paragraph 1 or 2.

In incidents of collective stowaways, which involve by brokers, two actions of having stowaways enter or land in Japan are necessary; one action is of taking collective stowaways from overseas to Japan and having them land in Japan, and the second action is of receiving these aliens, transporting them to a hideout and harboring them. It has been found that in many cases stowaways pay brokers a commission at the moment when the latter action, namely, the action of receiving stowaways, was successfully completed. It is thus recognized that this receiving action is a crucial element for “the stowing away business.” Also, it is evident that such an action is a primary factor to activate the crime of collective stowing away. Therefore, such a receiving action shall be punished along with the action provided for in Article 74.

2. “Received” in the first half of paragraph 1 of this Article means to receive, from a person who has committed the crime of Article 74, paragraph 1 or 2, the aliens whom the person has had landed in Japan under his control or charge, and also to take over his control or charge over these aliens. For example, if any person has received collective stowaways, from another person who had them land, at the landing place and has taken them in a vehicle, etc., it means that the person “received” stowaways. Also, “received” in the last half of paragraph 1 of this Article means to receive the aliens concerned from a person who received them and also to take over his control or charge over these aliens.

As far as the aliens concerned are repeatedly received from one person to another along with the control and charge over these aliens, however many times such a receiving action is repeated, any person involved in one of the series of the receiving actions may be punished under this Article. On the other hand, once the control and charge over the aliens concerned are terminated at a certain point, even if a person has received the aliens concerned from another person who newly established control and charge over these aliens, he shall not be punished under this Article.

3. “Transported” means to transport stowaways by a vehicle, vessel, etc. “Harbored” means to harbor stowaways by offering them a place to hide themselves from the authorities. For example, if any person has harbored stowaways in a warehouse or apartment room which he prepared, it means that he “harbored” them. Also, “concealed” means all the actions to have stowaways escape from the authorities except harboring, such as having stowaways pretend to be legal residents by offering them forged passports or certificates of alien registration or by furnishing them with a source of money to escape.

#### **Article 74-5**

This Article provides that a person who made preparations with the intention of committing the crime provided for in Article 74-4, paragraph 1 or 2 shall be punished for the preparation crime of receiving collective stowaways with penal servitude of not more than 2 years or a fine not exceeding 1 million yen.

#### **Article 74-6**

1. This Article stipulates a penal provision for the crime of aiding illegal entry, etc. in the pursuit of profit. Under this Article, any person, who has aided acts such as the crime of illegal entry or the crime of illegal landing in the pursuit of profit, shall be punished with penal servitude of not more than 3 years or a fine not exceeding 2 million yen, or shall be punished with both of these. Also, any person, who has aided the aforementioned acts by offering a passport or a crewman’s pocket-ledger which is invalid to the holder or fraudulent documents which were produced as passports or crewman’s pocket-ledgers, shall be punished in the same manner.

Among the actions of aiding collective stowaways, which shall be not punished as a crime in relation to collective stowaways, the crimes of aiding collective stowaways in the pursuit of profit or of providing a forged passport, etc. are regarded as serious. Thus, since it is inappropriate to evaluate such crimes as a mere crime of aiding illegal entry or landing, a special penal provision for these crimes was established under this Article. The acts corresponding to

these crimes include aiding an alien slip through the landing procedures at an airport in the pursuit of profit or providing an alien a passport belonging to another person or a forged passport, etc. to show at the application for landing permission.

2. “The acts provided in Article 70, Paragraph 1, Item (1) or (2)” in this Article intends to provide that committing such an act itself constitutes the crime provided in each item (for example, a person under 14 years old, who does not have criminal liability under the criminal procedures, shall be punished under each item as far as they are applicable to him).

3. “...made the acts...easier to commit” means that a person facilitated the acts by the criminal, who has actually committed the crime of illegal entry, etc.

4. “A passport or a crewman’s pocket-ledger, which is invalid to the holder” means that, even though the travel document is in the form of a genuine passport or crewman’s pocket-ledger, the document is not valid to the holder, such as a passport belonging to another person, a passport with an invalid period of validity or a passport which does not state Japan as a country of destination.

5. “Fraudulent documents produced as passports or crewman’s pocket-ledgers” means a so-called forged passport or crewman’s pocket-ledger, which can be misidentified as a genuine passport or crewman’s pocket-ledger by a non-expert in identifying such official documents.

#### **Article 74-7**

Prior to the amendment of the law (law no. 42 of 1997), only Article 73-2 (the crime of promoting an alien’s illegal work) provided that the crimes in Article 73, paragraph 1, items 2 and 3 shall follow the case of Article 2 of the Code of Criminal Procedure. Under this amendment, besides Article 73-2, Articles 74-2 (excluding the part relating to transportation in the territory of Japan), 74-3 and 74-6 also provide that the crimes provided in these Articles shall follow the case of Article 2 of the said Code; if any person has committed the crime outside Japan as provided in these Articles, he shall be punished.

#### **Article 74-8**

1. This Article provides for the crime by which a person who has harbored or concealed aliens, who entered or landed in Japan illegally, for the purpose of allowing the aliens to avoid deportation, shall be punished with penal servitude of not more than 3 years or a fine not exceeding 1 million yen. In addition, this Article provides that any person who has committed the above-mentioned crime in the pursuit of profit shall be punished with penal servitude of not more than 5 years and a fine not exceeding 3 million yen. Also, the penal provision of attempting to commit the crimes provided for in paragraphs 1 and 2 is stipulated under this Article.

2. “The purpose of allowing the aliens to avoid deportation” means to allow the aliens concerned, who entered or landed in Japan illegally, to avoid deportation and to continue their illegal stay in Japan. Therefore, in a case where any person temporarily harbored a prostitute, who escaped from gangsters, with the intention to have her appear and apply at the Immigration Bureau for special permission for stay (Article 50), the case is not included in the preceding purpose. On the

other hand, in a case where any person has allowed the aliens concerned, who entered or landed in Japan illegally, to avoid being taken by the authorities, it should be interpreted that he had the purpose provided for in this Article. On this account, it does not matter whether he was well acquainted with the deportation procedures or whether the deportation procedures were already proceeding when he took such an act.

3. “Harbored” or “concealed” is the same meaning as that in Article 74-4. Regardless of whether the aliens were able to avoid deportation or not, as far as any one has harbored or concealed them, he is subject to being punished.

## **Article 75**

No commentary.

## **Article 76**

1. Item 1 stipulates a penal provision for the action by which an alien, except for a special permanent resident, does not carry a passport or a permit in violation of the provision of Article 23, paragraph 1.

Article 77-2 provides for an exception to Article 23, paragraph 1 and the exception is applicable to a special permanent resident. If an alien except a special permanent resident has violated this paragraph, he shall be punished with a fine not exceeding 100,000 yen. Meanwhile, if a special permanent resident has violated this paragraph, he shall be punished with a non-penal fine not exceeding 100,000 yen.

2. Item 2 stipulates a penal provision for the action by which a person refuses to produce a passport or a permit in violation of the provision of Article 23, paragraph 2.

## **Article 76-2 Concurrent Impositions**

Prior to the amendment of the law (law no. 42 of 1997), only Article 73-2 (the crime of promoting an alien’s illegal work) was provided for as concurrent impositions; in cases where a representative of a corporation, a proxy of a corporation or a person, an employee of a corporation or a person, or any other persons working for a corporation or a person, has committed the crime in relation to the business of the corporation or the person as provided for in Article 73-2, paragraph 1, the corporation or the person shall be subject to a fine under the said paragraph along with the person who has committed the crime. Under this amendment, the crime provided for in Article 74 to 74-6 or 74-8 shall be also punished as concurrent impositions.

## **Article 77-2**

This Article provides that, in a case where a special permanent resident violates the duty of carrying a passport, etc. under Article 23, paragraph 1, he shall be punished with a non-penal fine as an administrative punishment.

## **Article 78 Confiscation**

### <Relevant Decisions by Courts>

- Article 78, paragraph 1 of the Immigration Control Act, that is, the provision of confiscation of the occupation of a vessel is not applicable to all cases in which an occupant of a vessel used his vessel for the crime provided for in Article 70, paragraph 1. Instead, such confiscation should not be undertaken under the spirit of law, not only when the occupation of the vessel was not based on the will of the occupant, but also when he was a bona-fide third person with no fault. (July 20, 1956, Fukuoka Higher Court)

- Even though a bona-fide third person has a mortgage on the vessel which was used for the crime by illegal entrants, the confiscation of such a vessel is possible. (June 22, 1982, Fukuoka District Court)