

Japan’s Lay Judge System (*Saiban-in Seido*) and  
Legislative Developments:  
Annotated Translation of the *Act Amending the Act on  
Criminal Trials with Participation of Saiban-in*

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I. COMMENTARY AND BACKGROUND TO THE NEW LEGISLATION

This article provides an annotated translation of the Act amending the Act on Criminal Trials with Participation of Saiban-in (“Saiban-in Act Amendment Act”), which was promulgated on June 12, 2015 and will come into effect on December 12, 2015.<sup>1</sup> The original Act on Criminal Trials with Participation of Saiban-in (“Saiban-in Act”) was enacted on May 28, 2004<sup>2</sup> and this Journal published an annotated translation of that legislation a decade ago.<sup>3</sup> The Saiban-in Act required that lay judges join a panel of professional judges to hear serious criminal trials, introducing increased citizen participation in Japanese criminal justice.<sup>4</sup> The first trial occurred in 2009 as the Saiban-in Act (Supplementary Provisions Article 1) required a preparation period of five years. The new system and lay judges’ participation is creating unpredictable consequences but in other ways has not lived up to reformers’ expectations for fundamental change to controversial issues such as conviction rates and sentencing.<sup>5</sup>

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<sup>1</sup> Saiban-in no sanku suru keiji saiban ni kansuru hōritsu no ichibu wo kaisei suru hōritsu [Act Amending the Act on Criminal Trials with Participation of Saiban-in], Law No. 37 of 2015.

<sup>2</sup> See Stacey Steele, *Proposal to Reform the Japanese Saiban-in Seido (Lay Judge System) to Exclude Drug-Related Cases: Context and Complexities from the Chiba District Court*, 16 AUSTRALIAN J. OF ASIAN L. 1, 19 (2015).

<sup>3</sup> Kent Anderson & Emma Saint, *Japan’s Quasi-Jury (Saiban-in) Law: An Annotated Translation of the Act Concerning Participation of Lay Assessors in Criminal Trials*, 6 ASIAN-PAC. L. & POL’Y J. 9, 233 (2005).

<sup>4</sup> See, e.g., LEON WOLFF, LUKE NOTTAGE & KENT ANDERSON, WHO RULES JAPAN? POPULAR PARTICIPATION IN THE JAPANESE LEGAL PROCESS 18 (Edward Elgar Publishing 2015), and MATTHEW WILSON, HIROSHI FUKURAI and TAKASHI MARUTA, JAPAN AND CIVIL JURY TRIALS 1 (Edward Elgar Publishing 2015) (discussing trends towards increasing citizen participation in Japan).

<sup>5</sup> See, e.g., Stacey Steele, *Elderly Offenders in Japan and the Saiban-in Seido (Lay Judge System): Reflections Through a Visit to the Tokyo District Court*, 35 JAPANESE

The amending legislation was anticipated from the time of the original legislation, which required that the saiban-in system be reviewed after three years of operation (Article 9). Almost immediately after the first trial, the Ministry of Justice established a key Working Group (*kentōkai*) to monitor the new system's progress in September 2009.<sup>6</sup> Reflecting the system's controversial development,<sup>7</sup> the Working Group received many different opinions about the new system and suggestions for revision, including removing cases involving the death penalty from the saiban-in jurisdiction due to the perceived and real emotional harm such cases have on at least some saiban-in.<sup>8</sup> Other suggestions included removing drug-related cases from the saiban-in jurisdiction for various reasons that Steele has documented.<sup>9</sup> Institutions such as the Supreme Court of Japan also supported the review process, collecting data and providing feedback from citizens who had participated as saiban-in. The media carefully watched the process as criminal justice has become an area of increasing interest in Japan, partly as a result of the introduction of the saiban-in system.<sup>10</sup>

As this article and translation reveal, the two key proposals for change discussed during the review process which made it into the amending legislation were the exclusion of cases expected to take over twelve months and provisions to provide greater protection of the identity of victims of sexual offenses. These proposals are not particularly controversial and one of the key architects of the saiban-in system, Professor Masahito Inoue, has advocated excluding longer cases from the saiban-in jurisdiction on the basis that the burden on non-professional judges is too great.<sup>11</sup> As the formal legislative Reasons (*riyū*) for the Saiban-

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STUDIES, 223 (2015) (as part of a discussion of elderly offenders and the saiban-in system).

<sup>6</sup> See Steele, *supra* note 2, at 9-12 (discussing the composition of the Working Group and its operations).

<sup>7</sup> See Dimitri Vanoverbeke, JURIES IN THE JAPANESE LEGAL SYSTEM: THE CONTINUING STRUGGLE FOR CITIZEN PARTICIPATION AND DEMOCRACY (2015) (comprehensive discussion of the emergence of the *saiban-in* system).

<sup>8</sup> See Steele, *supra* note 2, at 6-16 (review process and proposals for reform).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* See also Steele, *supra* note 5 (Steele's comments on traditional perceptions of Japanese criminal justice being benevolent in Foote's terms, at least to some offenders, and more recent interpretations of its move to a more contemporary punitive stance as supported by academics such as Miyazawa).

<sup>11</sup> See Stacey Steele, *Book Review: Juries in the Japanese Legal System*, AUSTRALIAN J. OF ASIAN LAW (forthcoming 2016) and Kent Anderson & Mark Nolan, *Lay Participation in the Japanese Justice System: A Few Preliminary Thoughts Regarding the Law Assessor System (saiban-in seido) from Domestic Historical and International Psychological Perspectives*, 37 VAND. J. TRANSNAT'L L., 935-92 (2004) (discussing Inoue's role in the reform process).

in Act Amendment Act demonstrates, these changes were deemed “necessary”:

裁判員の参加する刑事裁判に関する法律の施行の状況に鑑み、審判に著しい長期間を要する事件等を裁判員の参加する合議体で取り扱うべき事件から除外することを可能とする制度を導入するほか、裁判員等選任手続において犯罪被害者の氏名等の情報を保護するための規定を整備する等の必要がある。これが、この法律案を提出する理由である。<sup>12</sup>

In view of the circumstances of the operation of Act on Criminal Trials with Participation of Saiban-in, it has become necessary to introduce a system which provides for the exclusion of cases which require an extremely long period of time to reach a judgement from the cases that must be dealt by a panel involving saiban-in, and which provides the regulations to protect the information including the names of the victims of crime in proceedings to select saiban-in. This is the reason for submitting this legislative bill.

Although the Reasons are neither part of the legislation nor binding, they reflect the legislature’s intent to amend the Saiban-in Act and are therefore interesting for what they do not say. Whilst Reasons are typically short and we would not expect the Reasons to explain why other proposals were rejected, the rationale of “necessary” reflects the limited scope of the amendments. There simply was neither the political will nor the consensus for the enactment of other more controversial proposals such as excluding death penalty cases, drug-related cases, and sexual offenses from the saiban-in jurisdiction.<sup>13</sup>

Six years after the first trial involving saiban-in, jurisprudence has developed to help fill out this area of law, including influential and controversial judgements from the Supreme Court of Japan. Due to these decisions and everyday applications such as professional judges developing practices and preferences, professional judges, defense lawyers and prosecutors are more likely to have greater influence on the future development of the saiban-in system than any radical legislative change.

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<sup>12</sup> English translation by the authors. REASONS, <http://www.moj.go.jp/content/001137935.pdf> (last visited Apr. 16, 2016) (original Japanese version).

<sup>13</sup> See Steele, *supra* note 2, at 12-16 (more detail on the discussions leading up to the amendments).

## II. NOTES ON TRANSLATION

Our approach to this translation has been to provide a formalistic, direct translation given the legal nature of the underlying document.<sup>14</sup> This approach means that we have prioritised the original text over “eloquence”.<sup>15</sup> For native English speakers, this may make the text somewhat exotic sounding and convoluted in places. To some extent, the difficulty in comprehending the dense legal text reflects the formal nature of Japanese legal texts even in their original form, despite efforts by the Ministry of Justice to make legal drafting more understandable.

Further, this translation relies on the Japanese Ministry of Justice’s Legal Terms Japanese-English Standard Translation Dictionary<sup>16</sup> and the translation of the Saiban-in Act available on the Ministry of Justice website<sup>17</sup> unless otherwise indicated to maintain consistency with other legal translations.<sup>18</sup> Whilst this means that there are some deviations from Anderson and Saint’s terminology in their 2005 translation of the Saiban-in Act, legal translators today rely on the Legal Terms Japanese-English Standard Translation Dictionary<sup>19</sup> and Ministry of Justice translation. Lawson notes the limitations of the Ministry of Justice’s approach,<sup>20</sup> however, the project has opened up Japanese laws to a new readership. As Anderson and Saint note, there lacked a consensus on how many of the new Japanese terms should be translated at the time they produced their translation of the original legislation.<sup>21</sup> In addition, the Ministry of Justice’s translation project was still in its infancy.<sup>22</sup> A lack of consensus is no longer

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<sup>14</sup> See generally Leon Wolff, *Legal Translation*, in *THE OXFORD HANDBOOK OF TRANSLATION STUDIES* 228-242 (Kirsten Malmkjaer & Kevin Windle eds., 2011) (discussing legal translation).

<sup>15</sup> A similar approach was adopted by Anderson and Saint in their translation of the original legislation. See, Anderson & Saint, *supra* note 3, at 235.

<sup>16</sup> HÖREI YŌGO NICHI-EI HYŌJUN TAIYAKU JISHO [LEGAL TERMS JAPANESE-ENGLISH STANDARD TRANSLATION DICTIONARY] (10th ed. Mar. 2015), <http://www.japaneselawtranslation.go.jp/dict/download?re=2> (last visited Feb. 25, 2016) [hereinafter TRANSLATION DICTIONARY].

<sup>17</sup> Saiban-in no sanku suru keiji saiban ni kan suru hōritsu no ichibu wo kaisei-suru hōritsu [Act on Criminal Trials with Participation of Saiban-in], Law No. 63 of 2004, *translated in* (Japanese Law Translation [JLT DS]), <http://www.japaneselawtranslation.go.jp/law/detail/?ft=1&re=02&dn=1&co=01&ia=03&x=30&y=10&ky=saikan-in&page=1> (Japan) [hereinafter Saiban-in Act].

<sup>18</sup> See Japanese Law Translation, MINISTRY OF JUSTICE, JAPAN, <http://www.japaneselawtranslation.go.jp/> (last visited Nov. 9 2015).

<sup>19</sup> TRANSLATION DICTIONARY, *supra* note 16.

<sup>20</sup> Carol Lawson, *Found in Translation: The “Transparency of Japanese Law Project” in Context*, 24 *Journal of Japanese Law* 187, 187 (2007).

<sup>21</sup> Anderson & Saint, *supra* note 3, at 234.

<sup>22</sup> See User Guide, MINISTRY OF JUSTICE, JAPAN,

a concern a decade later, although some personal preferences persist, for example, contention over the translation of the term “saiban-in” itself.<sup>23</sup> For this reason and to avoid cultural and historical overtones associated with the use of English equivalents such as “lay judge”, “lay assessor” or “quasi-juror”, we have chosen to use the Japanese term of “saiban-in” in this article and the translation.

Finally, we note that the translation is not an official text and is provided as a reference material only. The original Japanese legislation published in the Official Gazette is the official document off of which this translation is based.

### III. TRANSLATION

裁判員の参加する刑事裁判に関する法律の一部を改正する法律（平成27年法律第三十七号）

Act amending the Act on Criminal Trials with Participation of Saiban-in (“Saiban-in Act Amendment Act”)<sup>24</sup>

裁判員の参加する刑事裁判に関する法律（平成十六年法律第六十三号）の一部を次のように改正する。

The Act on Criminal Trials with Participation of Saiban-in (“Saiban-in Act”)<sup>25</sup> is partially amended as follows.

第二条第一項中「次条」の下に「又は第三条の二」を加え、同項第一号中「禁錮」を「禁錮」に改める。

In Article 2(1), add “or Article 3-2” after “following Article” and in the same Article under item (i), replace “kinko (imprisonment without work) [which has furigana for ‘ko’]” with “kinko (imprisonment without work) [furigana removed]”.

第三条の見出しを削り、同条の前に見出しとして「（対象事件からの除外）」を付し、同条第一項中「畏怖し」を「畏怖し」に改め、同条の次に次の一条を加える。

Delete the heading for Article 3, add a heading “(Exclusion from subject cases) before the same Article, replace “ifushi (being terrified) [which has furigana for ‘i’]” with “ifushi (being terrified) [furigana

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<http://www.japaneselawtranslation.go.jp/help/?re=02> (last visited Nov. 9, 2015) (discussing the background to the development of the Legal Terms Japanese-English Standard Translation Dictionary and the Ministry of Justice’s translation website).

<sup>23</sup> See Anderson & Saint, *supra* note 3, at 234. See also Steele, *supra* notes 2, 4 (for debate over the translation of “saiban-in” into English).

<sup>24</sup> See Act Amending the Act on Criminal Trials with Participation of Saiban-in *supra* note 1.

<sup>25</sup> See Saiban-in Act, *supra* note 17.

removed]” in the paragraph (1) of the same article, and add the following article after this same article.

第三条の二 地方裁判所は、第二条第一項各号に掲げる事件について、次のいずれかに該当するときは、検察官、被告人若しくは弁護人の請求により又は職権で、これを裁判官の合議体で取り扱う決定をしなければならない。

Article 3-2 In cases where a District Court determines, with respect to cases listed in each item of paragraph (1) of Article 2,<sup>26</sup> that any of the followings applies, the District Court shall render a ruling at the request of, or by ex officio of, the public prosecutor, the accused or his/her counsel, that such cases shall be handled by a panel consisting of judges,<sup>27</sup>

- 一 公判前整理手続による当該事件の争点及び証拠の整理を経た場合であつて、審判に要すると見込まれる期間が著しく長期にわたること又は裁判員が出頭しなければならないと見込まれる公判期日若しくは公判準備が著しく多数に上ることを回避することができないときにおいて、他の事件における裁判員の選任又は解任の状況、第二十七条第一項に規定する裁判員等選任手続の経過その他の事情を考慮し、裁判員の選任が困難であり又は審判に要すると見込まれる期間の終了に至るまで裁判員の職務の遂行を確保することが困難であると認めるとき。
- (i) Where a District Court determines that the points of argument and the evidence of the relevant incident has been dealt with at the pre-trial arrangement proceeding, and the expected period required for the proceeding is extremely long, or where it is unavoidable to have an extremely large number of trial dates that the saiban-in are expected to be present or an extremely large volume of the trial preparation is expected, and it is deemed difficult to appoint saiban-in or to maintain the performance of saiban-in duties until the end of

<sup>26</sup> Art. 2(1) of the Saiban-in Act refers to cases involving offences punishable by the death penalty or life imprisonment with or without work. Cases listed in art. 26(2)(ii) of the Saiban-sho hō [Court Act] (Law No. 59 of 1947) are those cases involving crimes punishable by the death penalty or imprisonment over one year which have caused a victim to die by intentional criminal acts. *Id.* at art. 2(1).

<sup>27</sup> Court Act, art. 26(2) provides that crimes with a penalty of death or imprisonment over one year will be heard by judicial panel, and art. 26(3) provides that a panel of judges consists of three professional judges ("Saibankan"), one of whom will be a presiding judge. Act No. 59 of Apr. 16, 1947.

the period expected to be required for the proceedings, considering the circumstances of appointment and removal of saiban-in in other cases, and saiban-in appointment proceedings provided in Article 27, paragraph (1) and other situations.

二 第二条第一項の合議体を構成する裁判員の員数に不足が生じ、かつ、裁判員に選任すべき補充裁判員がない場合であつて、その後の審判に要すると見込まれる期間が著しく長期にわたること又はその期間中に裁判員が出頭しなければならないと見込まれる公判期日若しくは公判準備が著しく多数に上ることを回避することができないときにおいて、他の事件における裁判員の選任又は解任の状況、第四十六条第二項及び同項において準用する第三十八条第一項後段の規定による裁判員及び補充裁判員の選任のための手続の経過その他の事情を考慮し、裁判員の選任が困難であり又は審判に要すると見込まれる期間の終了に至るまで裁判員の職務の遂行を確保することが困難であると認めるとき。

(ii) In cases where a District Court determines that there is not enough saiban-in to form a panel under Article 2, paragraph (1) when there is no alternate saiban-in to be appointed to be saiban-in, and when it is expected that the period required for the proceeding is extremely long, or it is unavoidable to have an extremely large number of trial dates or an extremely large number of dates for trial-related work<sup>28</sup> that the saiban-in are expected to be present, and it is deemed difficult to appoint saiban-in or to maintain the performance of saiban-ins' duties until the end of the period expected to be required for the proceeding, considering the circumstances of appointment and removal of saiban-in in other cases, and saiban-in and alternate saiban-in appointment proceeding under Article 46, paragraph (2) and

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<sup>28</sup> A more direct translation of "kōhan jumbi" may be "trial preparation." However, this terminology may cause confusion given that saiban-in are not involved in pre-trial preparation per se, but may be required to be involved with the public trial outside of the dates over which the trial is actually being heard in court. Art. 52 of the Saiban-in Act places the obligation on saiban-in to appear "on the trial date on which the proceedings are held to conduct a decision with the participation of the saiban-in and on the day and time and at the place of examination of witnesses and other persons and inspection conducted by a court in the trial preparation." Saiban-in Act, *supra* note 17, at art. 52.

Article 38, paragraph (1) which applies to the same paragraph *mutatis mutandis*.<sup>29</sup>

- 2 前条第二項、第三項、第五項及び第六項の規定は、前項の決定及び同項の請求を却下する決定について準用する。
- (2) The provision of paragraphs (2), (3), (5) and (6)<sup>30</sup> in the preceding Article will apply to the rulings made under the preceding paragraph and any rulings to refuse a request made under the preceding paragraph.
- 3 第一項の決定又は同項の請求を却下する決定をするには、あらかじめ、当該第二条第一項各号に掲げる事件の係属する裁判所の裁判長の意見を聴かなければならない。
- (3) To render a ruling under paragraph (1) or a ruling to refuse a request under the same paragraph, the opinion of the presiding judge of the court before which the case referred to the relevant item in Article 2, paragraph (1) is pending must be obtained.

第十六条第八号に次のように加える。

Add the following in Article 16, item (viii).<sup>31</sup>

- ホ 重大な災害により生活基盤に著しい被害を受け、その生活の再建のための用務を行う必要があること。
- (e) He/she has suffered a significant damage to his/her base of life due to a serious disaster, and it is necessary for him/her to perform to rebuild his/her life.

第二十七条の次に次の一条を加える。

Add the following article after Article 27.<sup>32</sup>

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<sup>29</sup> Saiban-in Act, arts. 38 and 46(2) give the court power to appoint saiban-in to fill the vacancy, and to appoint alternate saiban-in as it deems necessary. *Id.* at arts. 38, 46(2). Oxford Dictionary defines “*mutatis mutandis*” as “(used when you are comparing two or more things or situations) making the small changes that are necessary for each individual case, without changing the main points”. *Mutatis mutandis*, OXFORD DICTIONARIES, <http://www.oxforddictionaries.com/definition/english/mutatis-mutandis> (last visited Feb. 29, 2016).

<sup>30</sup> Art. 2(2), (3), (5) and (6) provide for the organization of the panel that applies to each case, the date the rulings must be rendered, and how the case will be handled when a ruling is rendered until the panel is organized. Saiban-in Act, *supra* note 17 at art. 2(2), (3), (5), (6).

<sup>31</sup> Art 16 provides the list of causes which gives a person an entitlement to file a motion for refusal to be appointed as a saiban-in. This includes being a Member of the Diet of local public entities, a student or pupil of a school, and a person who served as a saiban-in within the past five years. *Id.* at art. 16.

<sup>32</sup> Art 27 provides that a court shall decide the date for the procedure of appointing



(非常災害時における呼出しをしない措置)  
(Measures not to summon in case of major disaster)

第二十七条の二 裁判所は、前条第一項本文の規定にかかわらず、第二十六条第三項の規定により選定された裁判員候補者のうち、著しく異常かつ激甚な非常災害により、郵便物の配達若しくは取集が極めて困難である地域又は交通が途絶し若しくは遮断された地域に住所を有する者については、前条第一項の規定による呼出しをしないことができる。

Article 27-2 Despite the provision of paragraph (1) in the preceding Article, amongst who are selected to be candidates under Article 26 paragraph (3), the court may not summon under paragraph (1) of the preceding Article a person who lives in the area where the receiving of mail or collecting the mail is extremely difficult or the traffic is closed due to a major disaster.

第二十八条第二項中「並びに前条第一項ただし書」を「、第二十七条第一項ただし書」に改め、「第六項まで」の下に「並びに前条」を加える。

In Article 28 (2), replace “and of the proviso of paragraph (1) of the preceding Article” with “, the proviso of Article 27 (1)”, and add “and the preceding Article” after “to (6)”.<sup>33</sup>

第三十三条第三項中「次条第四項」を「第三十四条第四項」に改め、同条の次に次の一条を加える。

In Article 33 (3), replace “paragraph (4) of the following Article” with “Article 34, paragraph (4)”, and add the following Article after the same Article.

(被害者特定事項の取扱い)

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saiban-in and summon candidate for saiban-in, and list the circumstances that will exempt the candidate from being appointed. The exempting circumstances include a person who does not have the right to vote in an election for a member of the House of Representatives, a person who has not completed compulsory education or not deemed to have acquired the same or higher scholarly level, a person who has been punished with imprisonment without work or heavier penalty, a Member of the Diet, and the victim of the case. *Id.* at art. 27.

<sup>33</sup> This amendment affects the application of art. 27-2 (Measures not to summon in case major disaster) and art. 28(1) (Additional summoning of candidates for saiban-in) of the Saiban-in Act. *Id.*

(Treatment of the matters identifying the victim)

第三十三条の二 裁判官、検察官、被告人及び弁護人は、刑事訴訟法第二百九十条の二第一項又は第三項の決定があった事件の裁判員等選任手続においては、裁判員候補者に対し、正当な理由がなく、被害者特定事項（同条第一項に規定する被害者特定事項をいう。以下この条において同じ。）を明らかにしてはならない。

Article 33-2 In the selection process of saiban-in in cases required under Article 290-2, paragraph (1) or (3) of the Code of Criminal Procedure<sup>34</sup>, the judge, prosecutor, accused, and lawyers must not disclose the matters identifying the victim<sup>35</sup> (as referred in paragraph (1) of same Article, and hereinafter referred as such in this Article below) to the candidates of saiban-in without an appropriate reason.

- 2 裁判長は、前項に規定する裁判員等選任手続において裁判員候補者に対して被害者特定事項が明らかにされた場合には、当該裁判員候補者に対し、当該被害者特定事項を公にしてはならない旨を告知するものとする。
- (2) If the matters identifying the victim are disclosed to the candidates for saiban-in in the selection process as set out in the previous paragraph, the presiding judge must notify the relevant candidates for saiban-in that the relevant matters identifying the victim must not be disclosed to the public.
- 3 前項の規定による告知を受けた裁判員候補者又は当該裁判員候補者であった者は、裁判員等選任手続において知った被害者特定事項を公にしてはならない。
- (3) A saiban-in candidate who received the notice, or a person who was a relevant saiban-in candidate at the time when he/she received the

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<sup>34</sup> The Keiji soshō hō [Code of Criminal Procedure], para. 2 refers to a case involving indecency, marriage, child pornography or child prostitution, cases where there is the risk that the honor or the peaceful existence of social life of the victim or others will be seriously harmed, and para. 3 refers to a case where the court finds a risk of physical or property harm, threat or confusion to the victim or victim's relatives. Act No. 131 of 1948, art. 290-2, para. 1, 3.

<sup>35</sup> Art. 290-2 provides that “the matters identifying the victim” are the name and address of the victim or other matters which will identify the victim of such case. *Id.* at art. 290-2.

notice under previous paragraph, must not disclose the matters identifying the victims received during the selection process.

第四十八条第二号中「第三条第一項」の下に「、第三条の二第一項」を、「事件」の下に「又は同項の合議体で取り扱うべき事件」を加え、「すべて」を「全て」に改める。

In Article 48, item (ii), add “, Article 3-2, paragraph (1)” after “Article 3, paragraph (1)”, and add “or the cases that should be dealt with the panel under the same paragraph” after “When all the cases handled by the panel under Article 2, paragraph (1)”, and replace “すべて (subete) [in hiragana]” with “全て(subete) [in kanji]”.<sup>36</sup>

第九十七条第五項中「おける」の下に「第二十七条の二、」を、「ついでに、」の下に「第二十七条の二中「前条第一項本文」とあるのは「第九十七条第二項」と、「第二十六条第三項の規定により選定された裁判員候補者」とあるのは「同条第一項に規定する選任予定裁判員」と、「前条第一項の」とあるのは「同条第二項の」と、」を加える。

In Article 97 paragraph (5), add “Article 27-2” after “provision of”. In addition, after “Article 29, paragraphs (1) and (2) and Article 38, paragraph (1) in cases where the saiban-in to be appointed are appointed as the saiban-in,” add “the term “provision of paragraph (1) in the preceding Article” shall be replaced with “Article 97, paragraph (2)”, the term “the candidates for saiban-in appointed in accordance with Article 26, paragraph (3)” shall be replaced with “people who have been selected to be appointed as saiban-in in accordance with paragraph (1) of the same Article”, and the term “paragraph (1) of the preceding Article” shall be replaced with “paragraph (2) of the same Article” in Article 27-2.<sup>37</sup>

附則

Supplementary provisions

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<sup>36</sup> This amendment affects the application of art. 48 of the Saiban-in Act (Termination of duty of saiban-in) when the court has ruled that the cases are to be handled by a panel of judges under the new art. 3-2 of the same Act. *See supra* note 1.

<sup>37</sup> Saiban-in Act, art. 97(5) is amended due to the addition of new art. 27-2 which provides for the measures not to summon saiban-in in case of emergency or disaster. Art. 97 applies when the duty of the saiban-in and alternate saiban-in to the trial on divided cases has terminated, and provides for the appointment of saiban-in and alternate saiban-in for subsequent trial on divided cases or the trial on consolidated cases. In effect, a court may not summon a person under art. 97 if the person falls within a situation described in art. 27-2.

(施行期日)  
(Effective Date)

1 この法律は、公布の日から起算して六月を経過した日から施行する。

1. This Act shall come into force after six months from the date of promulgation.<sup>38</sup>

(経過措置)  
(Transitional measures)

2 この法律による改正後の裁判員の参加する刑事裁判に関する法律（以下「新法」という。）第三十三条の二（新法第三十八条第二項（新法第四十六条第二項において準用する場合を含む。）、第四十七条第二項及び第九十二条第二項において準用する場合を含む。）の規定は、この法律の施行の日以後に開始された裁判員及び補充裁判員の選任のための手続並びに選任予定裁判員の選定のための手続について適用する。

2. New Article 33-2 of the Act on Criminal Trials with Participation of Saiban-in amended by this law, [including the case where new Article 33-2 applies mutatis mutandis to new Article 38 (2), including the case where new Article 38(2) applies mutatis mutandis to new Article 46 (2), Article 47 (2), and Article 92 (2)] shall apply to the appointment proceedings of saiban-in or alternate saiban-in, or selection proceedings of people who will be appointed as saiban-in that are commenced after the effective date of this law.

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<sup>38</sup> The Saiban-in Act Amendment Act was promulgated on 12 June 2015, and entered into force as of 12 December 2015. See Act Amending the Act on Criminal Trials with Participation of Saiban-in *supra* note 1.