

CROSS BORDER LEGAL SERVICES WITHIN ASEAN UNDER THE WTO : THE LAW AND PRACTICE BRUNEI DARUSSALAM

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and

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1 Free Trade and the challenges posed by GATS

It is important to consider the impact of the challenges presented by the GATS (The General Agreement on Trade in Services) towards the perceived notions of domestic sovereignty within the ASEAN member countries.

The GATS agreement is to be found as Annex 1B in the Agreement which created the WTO (World Trade Organization) and came into force in January 1995. It was drafted with the intention to provide a set of multilateral rules which would govern international trade in services. The single most significant general condition of this document is found in Article II, which obliges each WTO member to accord Most Favoured Nation (MFN) status and treatment to all other members. All members must provide "treatment no less favourable than that it accords to like services and service suppliers of any other country". The exemptions are to be found listed in the Annex on Article II exemptions. The main aims behind the creation of the GATS treaties is for it to become a catalytic tool which would increase business opportunities for service companies who may seek to export services or to back up industries which were seeking to invest and to operate in other WTO member countries

Although the GATS was formulated in 1995, it did not provide any precise definition of "services" but only laid down a fundamental framework of general rules for trade in services. It left the interpretation and questions of how the general rules would specifically apply to WTO member countries, modes of supply and their service sectors.

It is uncertain as to when and whether the definition legal services¹ will finally be determined but it is likely that this is an inevitability that WTO member

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¹ On the 6th July 1998 the WTO Secretariat prepared a Note named as "Legal Services" as a background document for discussions. See World Trade Organization: Council For Trade In Services, Legal Services, WTO Doc S/C/43 (6th July 1998)

states will be forced to comply with the liberalising and lowering of barriers to legal services².

It is important to note however, that the inclusion of "legal services" in GATS does not force a country's existing regulation of cross-border legal services to automatically comply with all the twenty-nine articles in GATS. The position of whether or not a WTO member must comply with all the GATS requirements will depend on whether legal services have been listed in its Schedule and also its Most Favored Nation ("MFN") Exemption List. A specific WTO member is only forced to comply with the GATS "national treatment" and "market access" requirements in the event that the member has included legal services into its Schedule of commitments under GATS. It could be explained that the existing effect of the GATS does not necessarily entail a liberalization of services and trade in legal services³. It would perhaps be more accurate to describe it as a status quo position whereby WTO member countries agree not to pass any new enactments or conditions which would make the provision of legal services more restrictive than the provisions which currently exist.

However, it is suggested that the ASEAN member states should now start to prepare themselves for the time when it may become inevitable for legal services industries to be freed up. In any event, there are many advantageous for legal services to be liberalised. Legal services form an integral part of all business transactions. The ASEAN member countries are seeking closer co operation and are trying to encourage a greater degree of economic co operation and integration in many sectors of commerce.

Foreign direct investments (FDI) are still very important to all of the ASEAN countries and such investors tend to hail from the EU, US, UK and North Asia. There are now greater numbers of mercantile transactions which involving international and multinational clients. These clients who have operations in various countries spread through the globe in turn seek specialist legal advice on an international or transnational basis. The trend appears to become increasingly common where by local ASEAN legal problems and the corresponding legal advice have to be integrated into an transnational level. Similarly, where arbitration or litigation services become necessary, the multinational client tends to want such issues to be resolved on a whole cross-border basis.

In the event that such multinational clients (inclusive of banks and financial institutions) have business bases spread across several ASEAN countries, they may require legal advice to be given by separate lawyers who

² The ball was set rolling during the WTO Ministerial Conference in Doha, Qatar, in November 2001, which gave rise to the Doha Declaration. A mandate was approved for negotiations on a number of issues which included the continuation of negotiations in services and the Doha Declaration set the 1st January 2005, as the date for completing the services agenda. This was to be reviewed at the Ministerial Conference in Mexico in 2003.

³ See, Mara Burr, "Will the General Agreement on Trade in Services result in International Standards for Lawyers and access to the World Market?" (Spring 1997, 20 Hamline Law Review 667). This article provides a view on the history of the GATS and the negotiations leading up to it being included in the Uruguay round of multilateral negotiations as well as the perceived impact of the GATS on the legal profession within the WTO member countries.

practice in their own individual jurisdictions. The total costs of legal services would be inflated as the client would have to engage separate lawyers in each of the different jurisdictions as well as in the possibility of engaging their own international law firm that acts for them on an international bases and may provide multi-jurisdictional expertise.

It would be more economical and more efficient if the client had the ability to engage a lawyer or lawyers who have both multi-jurisdictional experience and who are able to provide direct legal advice and services in the different ASEAN member states. In the event that it was possible for the ASEAN member states to collectively agree upon a mechanism for liberalising legal services amongst themselves, even in a limited fashion, it would be envisaged that the region would both appear as a more open market trading bloc and also it would assist the ASEAN itself in preparing for any future requirement to remove all barriers to the provision of legal services.

This bold suggestion must now be tempered in the light of reality and the situation on the ground within the ASEAN countries.

2 What is the current practice of the ASEAN member states with regards to admissions of foreign lawyers? - The Brunei position

Brunei Darussalam's GATS Status

Apart from the horizontal commitments listed in Brunei Darussalam's GATS Schedule, an MFN exemption for 'all measures pertaining to the provision of legal services in Brunei Darussalam is also currently being maintained. Brunei Darussalam can boast to be the most friendly legal environment towards the admission of foreign lawyer within the ASEAN and this will be reflected in both the criteria for admission and the statistics which will be given in this section of the paper.

Conditions for Admission in Brunei Darussalam

Brunei Darussalam practices a dual legal system, comprising the Civil Courts System and the Syariah Courts System⁴. Conditions for admission to practice in Brunei Darussalam are provided under the Legal Profession Act (Cap. 132) and the Syariah Courts Rules (Syar'ie Lawyers) Rules, 2002, Syariah Courts Act (CAP. 184) respectively.

Civil Courts

Section 18 of the Brunei Legal Profession Act (CAP. 132) stipulates for the qualifications that are required for lawyers to practise before the Brunei Civil Courts System.

⁴ The jurisdiction of the Syariah courts governs family law and probate matters (involving Muslims) and extends to limited criminal offences as provided under Part X of the Religious Council and Kadis Courts Act (Cap. 77).

Section 18 (1) of the LPA provides that:

Subject as hereinafter provided no person shall practise as an advocate and solicitor or do any act as an advocate and solicitor unless –

- (A) *his name is on the roll; (see sections 3 & 4)*
- (B) *he has a valid practicing certificate; and (see sections 14-15)*
- (C) *he or the firm of advocates and solicitors of which he is a member or the advocate or solicitor or firm of advocates and solicitors by which he is employed maintains a place of business in Brunei suitable for carrying on the practice of an advocate and solicitor or a firm of advocates and solicitors as the case may be, (subject to requirements for registration of Business Names)*

and a person who is not so qualified is in this Act referred to as an “unauthorised person”⁵.

Sections 3 and 4 of the LPA then provides the necessary conditions for qualification and admission as advocate and solicitor of the Brunei Bar. Section 3 defines a “Qualified Person” and stipulates that:

“A person shall be a qualified person for the purposes of this Act, if subject to the provisions of subsection (3), he –

- (a) *is a barrister-at-law of England or Northern Ireland or a Member of the Faculty of Advocates of Scotland;*
 - (b) *s a Solicitor in England or Northern Ireland or a Writer to the Signet, law agent or solicitor in Scotland; or*
 - (c) *as been in active practice as and advocate and solicitor in Singapore or in any part of Malaysia.*
- (2) *A person who is –*
- (a) *a Brunei Darussalam national; or*
 - (b) *a person to whom a Residence Permit has been granted under regulations made under the Immigration Act,*
on the date of his petition for admission shall, notwithstanding subsection (1), be a qualified person for the purposes of this Act if he has obtained any such alternative qualification as may be prescribed.
- (3) *A person who is not, on the date of his petition for admission, either a Brunei Darussalam national or a person to whom a Residence Permit has been granted under regulations made under the Immigration Act shall only apply for admission if, in addition to satisfying the requirements of subsection (1), he has been in active practice in any part of the United Kingdom, in Singapore, in any part of Malaysia or in any other country or territory or part of a country or territory in the Commonwealth designated by the Attorney General by notice in the Gazette for at least seven years immediately preceding such application.”*

Section 4 of the LPA governs the Admission of advocates and solicitors.

The Chief Justice may at his discretion, and subject to the provisions of this Act, admit as an advocate and solicitor any qualified person who –

- (a) *has attained the age of 21 years;*
- (b) *is of good character; and*

⁵ Nb. Names of persons admitted as advocates and solicitors are put on the roll kept by the Chief Registrar (section 10).

- (c) *has, to the extent that he is not exempt therefrom, served satisfactorily such manner and period of pupillage as may be prescribed for qualified persons⁶.*

In addition to the provisions on admission and practice to the Brunei Darussalam Bar, there are also special provisions within the LPA that allow for Ad hoc admission of foreign counsel on a case by case basis.

Section 7(1) of the LPA provides that “*Notwithstanding anything to the contrary contained in this Act, a judge may, in his discretion, admit to practice for the purpose of any one case any person who satisfies the requirement of either paragraph (a) or paragraph (b), that is to say -*

- (a) *a person who holds her Britannic Majesty’s Patent as Queen’s Counsel; and who –*
- (i) *does not ordinarily reside in Brunei Darussalam but has come, or intends to come, to Brunei Darussalam for the purpose of appearing in the case on instructions of an advocate and solicitor; and*
 - (ii) *possesses special skill and qualifications for the purpose of the case, whether or not such special skills and qualifications are available in Brunei Darussalam.*
- (b) *a person who is entitled to practice before the High Court in Malaysia, Singapore or Hong Kong or in such other Commonwealth country as the Chief Justice may specify; and who –*
- (i) *does not ordinarily reside Brunei Darussalam but has come, or intends to come, to Brunei Darussalam for the purpose of appearing in the case on instructions of and advocate and solicitor; and*
 - (ii) *has not been admitted under this section in respect of more than two other cases in the current calendar year; and*
 - (iii) *possesses special skill and qualifications for the purpose of the case which are not otherwise available in Brunei Darussalam.”*

There is currently no requirement that only Nationals of Brunei Darussalam are entitled to be admitted to practice as Advocates & Solicitors of Brunei Darussalam and as can be seen in the statistics, only 52% of the total number of practicing Advocates and Solicitors are Bruneian nationals and permanent residents⁷.

Syariah Courts

Admission and the regulation of Syariah lawyers is to be found in the Syariah Courts Rules (Syar’ie Lawyers) Rules, 2002, Syariah Courts Act (CAP. 184).

⁶ The pupillage period is currently 9 months under the Legal Profession (Pupillage Rules) 2000)

⁷ Section 12 of the LPA does contain an emergency provision to allow the Chief Justice to make a declaration in the *Government Gazette* giving notice that he is of the opinion that the number of advocates practising in Brunei is sufficient adequately to serve the needs of the community and in so invoking the declaration, only Brunei Darussalam nationals shall be entitled to be admitted as advocates.

Rule 10 of the Syariah Courts Rules (Syar'ie Lawyers) Rules, 2002, govern the admission of Syar'ie lawyers⁸.

A person may be admitted to be Syar'ie Lawyer if he –

- (a)
 - (i) *is a Muslim and has passed the final examination which leads to a bachelor's degree in Syariah from any university or any Islamic educational institution recognized by the Government of Brunei Darussalam;*
 - (ii) *is a Muslim advocate or solicitor⁹ enrolled under the Legal Profession Act (Chapter 132) who has passed the Syar'ie Lawyer Certificate Examination;*
 - (iii) *has served as a Syar'ie Judge, Kadi or Syar'ie Prosecutor for a period of not less than 3 years; or*
 - (iv) *is a Muslim who has received professional training in Islamic judicial matters which is recognized by the Government of Brunei Darussalam or who specializes in Hukum Syara';*

- (b) *has attained the age of 21 years;*
 - (i) *is of good behaviour and –*
 - (ii) *has never been convicted in Brunei Darussalam or in any other place of any criminal offence which makes him unfit to become a Syar'ie Lawyer;*
 - (iii) *has never been adjudged bankrupt; and*
 - (iv) *has never been disbarred, struck off or suspended in his capacity as a legal practitioner by whatever name called in any other country.*

Establishment of Professional law firms

Professional establishments, such as legal firms, are registered as sole proprietorships or partnerships under the Business Names Act (CAP.92). While there do not appear to be any prohibitions against foreigners establishing businesses in Brunei Darussalam, such applications are also forwarded to 3 departments, namely the Economic Planning and Development Department, the Immigration Department and the Labour Department, for their additional, prior approval, as well as the Registry of Business Names which comes under the purview of the Attorney General's Chambers. Unfortunately, it is not clear what the decision-making criteria for these departments are although it would appear that these departments have generally acted in favour of allowing applicants to set up shop.

Composition of the Brunei Bar and Ad Hoc Admissions

Annex 1: Composition of the Brunei Darussalam Bar, 2003 (Bar Chart)

⁸ This is to be read in conjunction with Rule 16 which provides that "*Subject to these Rules and any other written law, every Syar'ie Lawyer has the right to appear and represent his client in the Syariah Courts.*"

⁹ Rule 2 of the Syariah Courts Act (CAP. 184) has given the same meaning of "Advocate and Solicitor" as in the LPA (CAP. 132).

	Brunei (including Permanent Residents)	Malaysia	Singapore	United Kingdom	India
Number of Practitioners	45	34	4	2	1

Annex 2: Composition of the Brunei Darussalam Bar, 2003 (Pie Chart)

	Brunei (including Permanent Residents)	Malaysia	Singapore	United Kingdom	India	Total %
Percentage of Practitioners	52%	40%	5%	2%	1%	100%

Annex 3: Brunei Darussalam: Ad Hoc Admissions (1987-2002)

Year	87	88	89	90	91	92	93	94	95	96	97	98	99	00	01	02
Applications	11	26	2	4	4	4	4	7	3	1	1	3	1	10	7	4
Admitted	11	26	2	4	1	2	1	1	2	1	1	2	1	2	2	1

Comments on the Current GATS Negotiations and the Brunei Darussalam position

The Attorney General’s Chambers, has been closely observing the ongoing debate in the GATS negotiations on the possible classifications of sub-categories of legal services. Until such time as further study is done and comments given by the relevant interested parties, Brunei Darussalam has no official position regarding this matter.

During the present round of negotiations, Brunei Darussalam has received a request for further liberalization of legal services from Australia, who is one of the countries championing cause. Keeping in view that the current negotiations on classification have not been resolved and because consultations with the relevant affected parties have not been adequately undertaken, it is unlikely that Brunei Darussalam will be entertaining any requests for liberalization before the conclusion of this round of negotiations on 1st January 2005.

Currently the main impediments to entry into Brunei Darussalam’s legal services market is our accreditation requirements, which for the Civil Courts reflects our common law links and should be regarded as a reasonable restriction on entry, and our residency requirements. However, both the Civil Courts and Syariah Courts do allow for ad hoc or special admissions, section 7 and rule 32 respectively, which negates the residency requirements.

Future Plans

The Attorney General’s Chambers and the Brunei Law Society will need to further examine the consequences of liberalizing appropriate services within the

legal services sector. The negotiations on the classification of legal services will provide a useful tool in assisting us to make decisions on whether and how to liberalize relevant sub-sectors. With the recent enactment of the Legal Profession (Law Society of Brunei Darussalam) Order in July 2003, both the Attorney General's Chambers and the Brunei Private Legal Profession look forward to conducting useful dialogues with each other.

It is hoped that once the Law Society of Brunei Darussalam is in operation, there will be more valuable inputs and exchange of ideas that can assist the Attorney General's Chamber's examination of the consequences of liberalization¹⁰. However, the Attorney General's Chamber's examination should not be limited to the views of the Brunei legal profession alone, and the views of society in general and the business sector in particular, who should be the ultimate beneficiaries of the liberalization of legal services in Brunei Darussalam, should also be sought.

3 Barriers which inhibit transnational cross-border legal services within ASEAN

There are several factors which can be perceived to be the main barriers within ASEAN that would inhibit the growth of transnational ASEAN lawyers who can provide cross-border legal services. One of the difficulties faced by regulatory bodies in allowing foreign lawyers to provide legal services (local law or offshore law) is the fact that there is a complex interplay that would have to take place between the established local bar lawyers; the foreign lawyers; the domestic legal institutions and system as well as the regulatory authorities who are responsible for the regulation of the legal profession¹¹.

Apart from the fact that there are minor differences in the history, culture and the structure of the legal professions within ASEAN, different countries apply different tests and standards to maintain and regulate the integrity of their laws, legal and judicial systems. Different regulatory bodies from individual ASEAN member countries have drawn up their own regulatory code of conduct and rules to govern and determine which persons may provide legal services and the manner in which such services are provided¹².

¹⁰ The Brunei Court of Appeal has in a judgment of 31st October 2002 quoted the Representative of the Legal Profession, speaking at the Opening of the Legal Year on 30th May 2002, in reference to the obtaining of ad hoc admissions of Queen's Counsel and Senior Counsel from overseas and stated that "*Whilst the noble goal of protecting the local profession is lauded and whilst it may be that there are local skills available, perhaps the principle of allowing litigants to choose their own counsel should also be taken into account in appropriate circumstances..... investors will have to be assured that they will have at their disposal the best legal minds that can be offered locally and, whenever required, at their cost and choosing the best legal minds that they can afford to obtain from overseas.*"

¹¹ See, Trubek, Dezaly, Buchanan, "The Future of the Legal Profession: Global Restructuring and the Law: Studies of the Internationalization of Legal Fields and the Creation of Transnational Arenas", 44 Case Western Reserve Law. Rev. 407 (1994)

¹² See, Crabb, "Note, Providing Legal Services in Foreign Countries: Making Room for the American Attorney", 83 Columbia. Law Rev. 1767 (1983).

The difficulty and greatest resistance to allowing foreign lawyers to enter domestic legal services market is understandably to be found in the established legal professions in the domestic country which would have already evolved into a monopoly of qualified, local providers of legal services. The existing regulations in many of the countries within the ASEAN prohibit both unqualified domestic persons from providing legal services but also prevent foreign lawyers from providing any legal services. Although some of the reasons behind the current measures that curb the would be activities of foreign lawyers can be justified objectively on grounds such as the necessity to maintain the high quality and standards of lawyers and legal services provided¹³, the primary reason behind other measures are designed to insulate and protect the local legal fraternities from perceived stronger foreign competition.

Such unfair anti-competition measures that have been created include clear prohibitions based solely on nationality and citizenship prerequisites for entry into local bar and practice as well as restrictions or severe limitations on work visa requirements. Some ASEAN member countries may also have implemented labour and immigration laws and policies which block access by otherwise suitably qualified foreign lawyers and their foreign law firms to provide legal services in the country. Some countries may have subtle restrictions on the ability of qualified foreign lawyers to enter into the market by implementing conditions in the form of foreign lawyers having to undergo additional educational requirements and additional examinations.

Although it is extremely important to ensure that such measures have been put in place to ensure that members of the public are protected from being serviced by unqualified foreign lawyers who may have had different legal training in other legal systems, perhaps it may be beneficial to allow ASEAN citizen foreign lawyers to have the right to sit for the local Bar examinations without the need to subject them to a long period of having to take an additional educational course. It is possible that local Bar associations and regulatory bodies may be concerned that experienced foreign lawyers like Senior Counsels, Queens Counsels or other senior foreign lawyers may easily pass the examinations. However, it should be possible for the ASEAN member countries to collectively agree amongst themselves as to more preferential rules to be given to each other's legal professions¹⁴.

It may be timely that the ASEAN members may wish to devise a form of intra-ASEAN regulatory regime that can govern and regulate ASEAN cross-border legal practice. This will then assist ASEAN to capitalise upon the process

¹³ See Gold, "Legal Problems in Expanding the Scope of GATT to Include Trade in Services", 7 *International Trade L. Journal* 281(1982-83).

¹⁴ For instance, a commonly agreed rule could be designated to allow ASEAN citizen lawyers from other countries the right to simply sit for local entrance examinations and to waive any requirements of having to spend long periods undergoing an additional educational course before they can sit for such an exam. This preferential treatment accorded only to citizens from ASEAN member countries and not to all foreign lawyers will control the perennial fear or opening the flood gates to hordes of invading foreign lawyers.

of globalisation of legal services taking place worldwide and which has started to diminish the distinctions between national and international legal matters¹⁵.

Apart from the possibility of a future requirement from the WTO to completely open up the legal services sector, there are good reasons for the ASEAN member countries begin with experimenting on closer cooperation and to foster closer co-operation for their lawyers to work closer together and to provide seamless cross-border legal services.

Apart from preparing themselves for the need to compete on an equal footing with the comparatively much larger established US, UK and EU law firms in their own countries, there is a compelling argument that complete protectionist policies and isolation of a domestic legal market from any form of competition will stifle and prevent that domestic market from developing the necessary skills to compete successfully in the global market¹⁶. The insulation of the local domestic legal market may cause local lawyers to be less willing to update themselves and to hone their skills. As such, they may become slow to respond to the new trends in the global market and to the demands of domestic legal consumers who may also wish to export their own goods and services to other countries. The presence of a controlled and limited number of qualified foreign lawyers will create a natural and important incentive for local lawyers to increase their competitive edge in the form of knowledge and service to their clients. This would be very important in the fields on banking and financial services, cross-border and international mercantile transactions and in areas where conflict of laws and international laws apply.

4 How may the ASEAN countries ensure that any benefits in cross-border services will only be reaped by lawyers who are ASEAN nationals and law firms that are established or incorporated or registered in their own countries?

Proposed solution to be considered by the ASEAN member countries

In an ideal world where all the 10 member countries of ASEAN agree to the idea of a restricted reciprocity of admitting and providing practising certificates to each other, it is suggested that the members who have agreed to such reciprocity could devise a working solution in implementing a controlled experiment for its nationals (lawyers) to conduct cross-border legal services¹⁷. They could for example allow only a fixed and limited number of lawyers who are ASEAN nationals who have already (1) been called to their own local bars or law societies of the ASEAN countries or (2) who are existing members of that of another bar or law society from either the UK or US and (3) meet the educational

¹⁵ See, Abel, "Symposium: The Future of the Legal Profession: Transnational Law Practice", 44 Case Western Reserve Law. Rev. 737 (1994)

¹⁶ See, Abel, at 748

¹⁷ This is as opposed to non ASEAN nationals who are international lawyers or law firms with a branch office seeking to gain entry into another ASEAN member country by virtue of having an existing base in a different ASEAN country.

accreditation requirements¹⁸, to be considered to have the right to apply to another ASEAN countries as an ASEAN counsellor and the right to practice local law for a period of up to 3 - 5 years¹⁹.

In order not to provoke any violent backlash or protests from the local legal fraternities, it is proposed that there be a maintained quota of a maximum of 9% of foreign lawyers who are nationals of ASEAN countries (“ASEAN lawyers”) to be given this right to practice local law. This total of 9% of practising certificates being awarded to neighbouring ASEAN lawyers should be further limited to a maximum quota of 1% from each of the other individual nine constituent countries forming the ASEAN²⁰.

A form of proportionality test can be developed so as to cause fairness among all ASEAN member countries. This proportionality test should not be based upon a fixed number of ASEAN nationals from each country coming into the country but rather should be fixed as a percentage of the size of the existing local practising Bar of the host country that is prepared to let other ASEAN nationals into the country. This would of course also be subject to the condition of reciprocity whereby only lawyers from countries who also admit lawyers from other ASEAN countries, would be allowed to practice²¹.

Example 1: Country A has 1000 lawyers holding practising certificates. Under this proposal, Country A will have to allow up to a maximum of 9% of its total practicing lawyers or 90 ASEAN lawyers coming into Country A. This would mean a maximum quota of up to 10 lawyers (1% of host country total) from each of the remaining 9 ASEAN member countries.

Example 2: If country B has only 200 local lawyers holding practising certificates, then it would have to allow 18 lawyers (equivalent to a maximum of 9% of its total lawyers) from the 9 other ASEAN countries into its Bar. This would mean a maximum quota of up to 2 lawyers (1% of host country total) from each of the remaining 9 ASEAN member countries.

To further ensure that the concerns over the integrity of the local laws and local legal profession’s fear is placated, this right is subject to the candidates having a good reputation as a leading lawyer in their own original ASEAN country of practice; a mastery of general legal skills as well as knowledge of the

¹⁸ All purely anti-competitive discriminatory practices such as the insistence on nationality as a pre-requisite to practising local laws should be removed. The focus should be shifted to the individual applicant’s academic and track record excellence.

¹⁹ ASEAN citizen foreign lawyers are to have the right to sit for the local Bar examinations without the need to subject them to a long period of having to take an additional educational course. The necessity for pupillage requirements should be removed for applicants who have been in active practice for more than 10 years.

²⁰ No single ASEAN member state should be allowed to have more than 1% of the allocated quota of the host country’s total number lawyers.

²¹ Allow direct applications from those other nine ASEAN country(s) lawyers to come in and decide how many PC’s to be granted for a 3 - 5 year period and then subject to renewal.

local laws of the ASEAN country in which the candidate seeks to practice in and a minimum amount of professional liability insurance coverage.

This practising certificate scheme could come under an independent regime and could be called an ASEAN practising certificate²². Such a proposal would not in fact amount to a further liberalisation of trade services rules and would probably be welcomed by the global community as a first step towards liberalisation of legal services.

Proposed code of conduct that could be applied to deal with cross border legal services within the ASEAN Legal Fraternities

In order to regulate and harmonise the ethical standards of the "core values" of the legal professions within the ASEAN member countries, it is proposed that the committee members and leaders of the various Bar Associations within the ASEAN countries could meet to work out an acceptable common code of conduct that could be adopted in each member country for ASEAN cross-border services. This would in effect mean that within each ASEAN member state, there would be 2 separate codes of conduct which would exist side by side.

Various codes of conduct from other regional blocs could be looked at for consideration or adoption or modification by ASEAN. The most logical format would be that of the Council of the Bars and Law Societies of the European Community (CCBE) European Code of Conduct. This is an code of conduct that has been incorporated in 1988 by all the Bar and Law society regulatory bodies of the 17 individual European countries which form the European Union to govern cross-border intra EU legal services²³.

Final conclusion - Protectionism vs Liberalisation:

It would probably be fair to suggest that in actual practice, the majority of the legal professions in the countries within the ASEAN are not yet ready to open heartedly accept the proposals that there can be a free movement of lawyers from the different professional lawyers in the region. This fear that their rice bowl may be affected by invading hordes of lawyers from other countries is totally understandable even if it is an unjustified fear.

The suggestions that have been made in this article especially with regards to putting some safeguards into place could however be looked at and studied as a means to control the fear of the unleashing of the floodgates arguments for members of the profession who are against liberalism.

It will be inevitable that in time to come, the legal professions in the ASEAN countries will have to brace themselves for an invasion of international

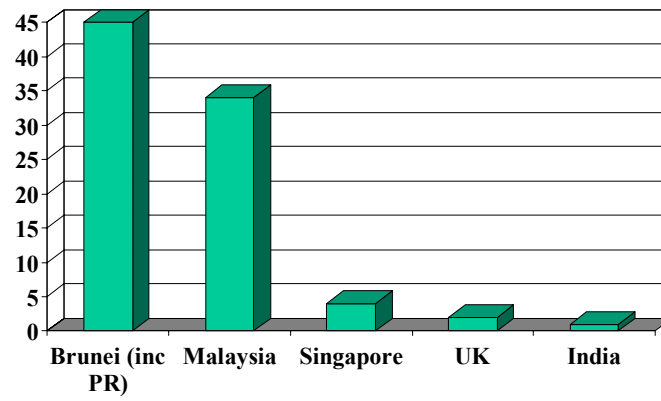
²² To ensure that such a scheme is workable, perhaps the costs and administrative tasks of getting this ASEAN practising certification scheme going should be shouldered by the individual Attorney General's Chambers or Ministries of Laws of each ASEAN member state.

²³ For a more general form of code of conduct, one could also consider the International Bar Association's (IBA) Code of Ethics that was first laid down in 1956 as well as the IBA's General Principles for the Establishment and Regulation of Foreign Lawyers, 1988

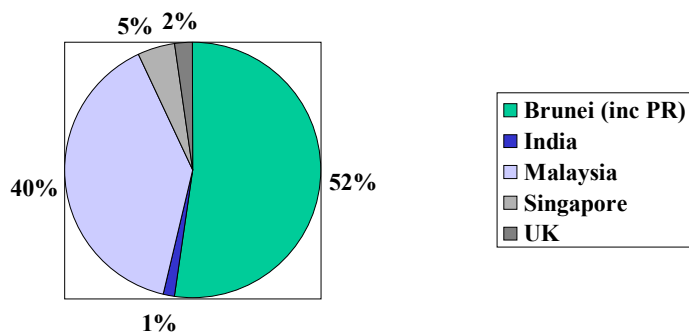
law firms into their territories. It is submitted that if this situation were to happen suddenly, it could have a correspondingly sudden catastrophic impact causing unhappy consequences on the professions. There may well be a justification for the profession to slowly prepare itself for such an event taking place by at least accepting a token, but growing number of lawyers from each country which could be implemented in direct correlation to the size of the country in which the host country will be prepared to issue out full practising certificates to the other ASEAN nationals.

We are fortunate that the ASEAN Law Association has provided us with a forum which enables us to share the knowledge, views and experiences of our closest neighbours in this important matter. We hope that our suggested views on how to achieve a controlled degree of liberalisation and closer co operation in cross border legal services will be looked at, refined and taken up by others in our mutual quest to ensure the future survival, well being and successes of the ASEAN legal professions and the ASEAN as a whole.

Annex 1
Composition of the Brunei Darussalam Bar, 2003
(Source: Figures provided by the Chief Registrar's Office)



Annex 2
Composition of Brunei Darussalam Bar, 2003
(Source: Figures provided by the Chief Registrar's Office)



Annex 3
Brunei Darussalam: Ad Hoc Admissions
(1987-2002)

(Source: Figures provided by the Chief Registrar's Office)

