

LIBERALISATION OF THE SINGAPORE LEGAL SECTOR

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1. Singapore was previously a colony of Great Britain. The British introduced the English Legal System into Singapore. Singapore thus became a Common Law Country with a legal system based on the English Legal System. Accordingly, the Singapore Legal Profession is based on and follows the tradition and practices of the legal profession in England.

2. However, unlike England, where the legal profession comprise barristers who appear before the courts, and solicitors who do not appear in court, the Singapore legal profession is a “fused” profession. All lawyers are Advocates and Solicitors. They can deal directly with clients and at the same time plead in the Courts. As with the legal profession in England, all Advocates and Solicitors of Singapore are “officers of the Court”. They derive their right to practice law from being admitted by the Supreme Court to the Roll of Advocate and Solicitors. As officers of the Court, their primary duty is to assist the Court in the administration of justice. They do so by putting forward all relevant facts and arguments in support of their respective client’s case, in the knowledge that where there is an opposing party, the advocate for that opposing party will do likewise for that opposing party. This is known as the “adversarial system” and is believe to ensure that all relevant facts and arguments are placed before the Court to assist it in coming to its decision on any dispute adjudicated by it.

3. A primary duty of an Advocate and Solicitor as an officer of the Court is to defend the Court. This is a particularly important duty when the standing and integrity of the Court is attacked by persons who are hostile to it. The principle here is that permitting the standing and integrity of the Court to be impugned would have a direct impact on individual lawyers as they are all officers of the Court and any attack on the Court would be an attack on their own integrity and standing.

Regulation of the Singapore Legal Profession

4. The Singapore Legal Profession is regulated by the Legal Profession Act, Chapter 161, 2009 Revised Edition. Under this Act, the practice of law is the sole preserve of Advocates and Solicitors. Unless a person is admitted to the Singapore Bar and has attained the status of an officer of the Court, it will be illegal for him or her to practice law in Singapore. The Legal Profession Act sets out a list of activities which are considered the exclusive preserve of Advocates and Solicitors of Singapore. These include representing persons as clients in matters before the Court and acting as legal representatives in property transactions. It is illegal for persons who are not Advocates and Solicitors with valid Practising Certificates to undertake such work. However, many exceptions are permitted, e.g. there is no prohibition against a person acting as in-house corporate counsel or undertaking pro bono legal work.

5. Advocates and Solicitors in Singapore traditionally practice as sole proprietors or in partnerships. Recent amendments to the Legal Profession Act permitted new vehicles for the practice of law such as the Limited Liability Partnership (LLP) and Limited Law Corporations (LLC).

Regulation of foreign lawyers and foreign law practices

6. Until 2000, there were no written laws providing for the regulation of foreign lawyers and foreign law practices in Singapore. This notwithstanding, since 1970, numerous foreign law firms have established themselves in Singapore and numerous foreign lawyers have practiced in such firms. So long as they do not practice Singapore Law, they are not within the regulatory regime of the Legal Profession Act and thus there was no prohibition against them operating in or from Singapore. They could practice home country law, third country law and international law. But if they were to practise Singapore Law, they would be in contravention of the Legal Profession Act and would be liable to prosecution.

7. Even though there was no statutory regime for the regulation of foreign law practices and foreign lawyers in Singapore, a system was put in place whereby all foreign law practices desiring to establish in Singapore were required to obtain the permission of the Attorney-General in order to do so. The Attorney-General would impose conditions on these foreign law practices before granting his permission. The most important condition imposed by the Attorney-General was that these foreign law practices are not to practice Singapore Law. They could only practice "offshore", i.e. international law, home country law or third country law. There was also an understanding, which in most cases was

informal, that there will be transfer of knowledge and skills by that foreign law practice to local lawyers. It was understood that failure to comply with the conditions prescribed by the Attorney-General can result in difficulties for that foreign law practice, including difficulties in obtaining employment passes for its lawyers.

Developments since 2000

8. Arising from the 1997 Asian financial crisis, the Singapore Government undertook a review of the bases of the Singapore economy to identify opportunities for future growth. The provision of legal services was identified as an area of economic opportunity that has potential for further growth and which could enhance the resilience of Singapore's economy. It was identified at that time that this area of economic activity could be enhanced by attracting more top international law practices to operate from Singapore. Attracting top international law practices would also complement the effort to further develop the financial services sector of the Singapore economy. The financial services sector was seen as an extremely important sector for continued economic growth.

9. To pursue this direction, a Committee was established chaired by the then Attorney-General (now Chief Justice) Chan Sek Keong to undertake a review of the Singapore Legal Profession. The Committee was to identify measures to attract top international law practices to establish themselves in Singapore. This Committee undertook a survey of foreign law practices in Singapore as well as Singapore law firms in order to determine the feasibility of various ideas that were put forward at that time. Among the ideas being advocated for at that time was that foreign law practices should be allowed to practice Singapore Law as an incentive for them to establish themselves in Singapore.

10. After examining the results of the survey and conducting extensive consultations, the Committee made a number of recommendations. These recommendations were accepted by the Singapore Government and resulted in the 2000 amendments to the Singapore Legal Profession Act.

11. The 2000 amendments introduced a new regulatory regime for foreign law practices in Singapore. For the first time, all foreign lawyers and foreign law practices in Singapore were required to be registered. The Attorney-General was established as the regulatory authority for all foreign lawyers and foreign law practices. A new agency called the "Legal Profession International Services Secretariat" was established in the Attorney-General's Chambers with responsibility for the registration of all foreign lawyers and foreign law practices in Singapore.

12. These amendments to the Legal Profession Act introduced two new legal vehicles which can be adopted by foreign law firms in order to engage in the practice of Singapore Law. The first vehicle was the Joint Law Venture (JLV) which in essence is a joint undertaking between a foreign law practice and a Singapore law firm. This undertaking can be structured either as a partnership or as an incorporated entity. JLVs were allowed to be established to focus on serving the legal needs of the banking and financial sectors of the economy. The JLV can deal with clients and render bills as a single entity. This meant that the clients of the constituent foreign law practice in banking and other transactions of a financial nature that include matters governed by Singapore Law can obtain such services from the JLV through its constituent Singapore law practice.

13. The other entity introduced by the 2000 amendments was the Formal Law Alliance (FLA). An FLA is a cooperative structure which can be established between a foreign law practice and a Singapore law practice. The foreign law practice and the Singapore law practice in an FLA remain as separate entities but practice in co-operation under a single statutory framework. It was envisaged that work governed by Singapore Law required by clients of a foreign law practice in an FLA will be undertaken by the Singapore law practice in that FLA.

Further Developments

14. The JLV and FLA schemes introduced in 2000 were subject to ongoing reviews. In 2005 and 2006 the Singapore Government established Review Committees, both chaired by the then Attorney-General (now Chief Justice) Chan Sek Keong, to consider modifications to these schemes in order to ensure the required legal support for the strategic service sectors of the economy. Pursuant to the recommendations of these Committees, the Legal Profession Act was further amended to provide, among other things, for a Special Scheme to be administered by the Attorney-General under which selected outstanding foreign lawyers can be registered to practice Singapore Law in selected areas. The scope of work that foreign law practices can engage in within Singapore was expanded to include international commercial arbitrations conducted in Singapore. In addition, the Act was amended to enable foreign lawyers to own up to 25% of the shares of a Singapore law practice. That was to assist Singapore law practices to possess in-house foreign law expertise and grow their practices abroad.

15. From 2000 onwards, there were very substantial developments in the global economic scene, driven very largely by technology and increasing globalization. This was particularly so in the financial services sector. Singapore continued to grow as a hub for

financial services. Together with the development of other aspects of the Singapore economy, this led to increasing demand for legal services in and out of Singapore.

16. This demand for legal services was generated not just by the explosive growth of the Singapore financial services sector but also by the growth of dispute resolution practice in Singapore. The Singapore Government had identified dispute resolution, particularly, arbitration, as an area that can be further developed in order to enhance the Singapore legal sector and to establish Singapore as a legal hub for the region. To this end, the Government provided various incentives in order to attract and develop dispute resolution services in Singapore. This naturally led to a demand for lawyers and arbitrators.

17. At that same time, Singapore experienced a shortfall of good lawyers. Singapore had previously restricted admissions to the Singapore Legal Profession as it was feared that given the number of young persons opting for legal studies, there would be an over-supply of lawyers in Singapore. However, the growth of the Singapore legal sector as well as the fact that many persons who were legally trained did not choose to practice law but instead pursued other avenues meant that the feared over-supply of lawyers in Singapore did not materialize. In addition, many young Singapore lawyers desired to work abroad in major international law firms, particularly in the other major financial centres of the world. All these resulted in a shortfall of good lawyers in Singapore.

18. In order to address all these, another committee, called “The Committee to Develop the Singapore Legal Sector” was appointed by the Government in 2006 to examine ways and means to enhance the Singapore legal sector. This Committee was headed by Justice V K Rajah, a Judge of the Supreme Court. After extensive consultations, the Committee submitted a report to the Government which recommended a number of fundamental changes to the Singapore legal sector. Specifically, the Committee recommended the further liberalization of the legal sector. These recommendations were accepted by the Government and in 2008, the Singapore Legal Profession Act was further amended to give effect to the recommendations of this Committee.

Further Reforms in 2008

19. The most important and far reaching recommendation of the Committee to liberalize the Singapore legal sector and which was enacted into law was the establishment of Qualifying Foreign Law Practices (QFLP). The QFLP is a foreign law practice in Singapore which is allowed to practice Singapore Law, but only through Singapore lawyers who are its partners or associates. These QFLPs are free to practice

Singapore Law in all areas of legal practice, except for a small number of specifically ring-fenced domestic areas such as litigation in the Courts and constitutional and administrative law. Up to this time, 6 QFLP licenses have been issued to foreign law practices in Singapore and all of them have commenced their practices.

20. At the same time, the JLV structure was considerably enhanced. The constituent foreign law practice of a JLV can now share up to 49% of the constituent Singapore law practices' profits in permitted areas; these constituent foreign law practices can also directly hire Singapore lawyers; and partners from the constituent Singapore law practice of a JLV are now allowed to concurrently hold partnership and administrative positions in the constituent foreign law practice. However, a number of restrictions continued to be maintained. The most important restriction is that foreign lawyers are not allowed to obtain management control of the constituent Singapore law practice of a JLV.

21. Another far-reaching measure that was introduced by the 2008 amendments was that Singapore lawyers in foreign law practices, even if they are not a QFLP or a constituent of a JLV, can practice Singapore Law in transactions where a proposal has been made that any dispute arising therefrom will be resolved through arbitration in Singapore. This is regardless whether it was eventually agreed that the arbitration will take place in Singapore. It was explained by the Minister for Law when he introduced these amendments in Parliament that these amendments will offer new avenues for Singapore lawyers and provide them with far greater opportunities.

Conclusion

22. The measures introduced by Singapore to liberalize the Singapore legal sector and promote greater scope for foreign lawyers and foreign law firms to practice domestic law were all designed to enhance the Singapore legal sector. Many of these measures are still in their infancy and it will take some time to determine with certainty whether or not these measures will achieve their objectives.

23. Singapore is unique in that it is the only independent developing country that allows foreign law practices to practice its domestic law. They can do this through Singapore lawyers who are their partners or their associates. The restriction on foreign lawyers who are not trained in Singapore Law practicing Singapore Law still remains. All these measures introduced by the Singapore Government were carefully



calibrated to balance economic imperatives with the fundamental features, values and traditions of the Singapore legal profession.

24. The Government has recently announced that more QFLP licenses will be issued shortly. That was an indication that even though these measures were very much in their infancy, there has been positive feedback on their efficacy in the achievement of their objectives. It can thus be expected that in the foreseeable future there will be further developments in this regard. Singapore's legal sector is certain to be further liberalized with more foreign law practices and foreign lawyers being accorded greater opportunities to participate in the domestic legal sector. It is hoped that all these will enable Singapore and the Singapore legal profession to achieve the goal of establishing Singapore as the hub for legal services and Singapore Law as the preferred governing law for cross-border legal transactions in this region.

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