

**International Bar Association
3rd Asia-Pacific Regional Forum Conference**

**“LIBERALISATION OF LEGAL SERVICES FREEING THE LEGAL
LANDSCAPE: IS SOUTH-EAST ASIA READY?”**

27 November 2012

“Singapore’s Journey of Liberalisation”

Speech by Singapore’s Attorney-General Steven Chong SC

Distinguished delegates to the 3rd Asia-Pacific Regional Forum Conference, good afternoon.

1. It is an honour and privilege for me to present the keynote address for this afternoon’s discussion, and to share the stage with such a distinguished panel of lawyers from the region.

2. This afternoon, I will share with you Singapore’s journey over the last three decades on the liberalisation of our legal services market, our calibrated approach, the pain we went through, the challenges we encountered, the lessons learned, the various models which we experimented with and most importantly, how we were able to grow and develop the local law firms in spite of the introduction of competition from foreign law firms.

Introduction

3. The age of globalisation is well upon us. With the integration of economies across the world and the overwhelming prevalence of cross-border transactions, multi-national legal practice has now become a functional necessity. In this new environment, law firms can no longer hope to rely solely on their traditional domestic legal practices to thrive or survive. The only way forward is to develop the legal services sector to embrace new practice areas and expand international legal expertise to cater to market demands. In other words, liberalisation is the only answer.

4. The more pressing questions are when to liberalise, and to what degree. Those are especially difficult questions to answer, particularly now that the global economy is weighed down by the Eurozone sovereign debt crisis, the continued fragility of the US economy and growing signs of what the recent IMF World Economic Outlook Report described as a “downshift in China’s and India’s growth prospects”. Growth forecasts for developing Asia have already been cut and the IMF’s chief economist has gone so far as to suggest that the world economic crisis could take 10 years to run its course.¹ It would be fair to say that any steps towards liberalisation of legal services now would be taken in a most challenging economic climate.

5. There is, however, some reason for cheer. Amidst the sea of gloomy economic numbers around the world, South-east Asia as a region stands fairly resilient. Growth projections for South-east Asian nations may have slowed compared with past years, but they remain far stronger than those of mature markets such as the US and Europe. With traditional regional powerhouses China and India shifting to a lower gear, international investors and international law firms will increasingly look to South-east Asia as a new haven of opportunities. Singapore’s Minister for Law has pointed out that ASEAN as an

¹ “Crisis will last a decade: IMF chief economist”,
http://www.channelnewsasia.com/stories/afp_asiapacific_business/view/1229324/1/.html.

entity has a combined population of 608 million people and a GDP of S\$1.8 trillion, making it Asia's third largest economy together with India.²

6. The key question is how each of us can harness the tremendous potential in this region to develop our respective legal services sectors whilst still maintaining and even growing the space for our domestic law firms to flourish. It is a delicate balancing act.

7. Before examining the Singapore experience, it is imperative for me to stress that while there may be some critical factors that I feel will be universal in their application, there is ultimately no common road map for us all to follow. As a region, we may share a geographical space but our legal, social and political systems are far from homogeneous. The recipe of successful liberalisation ultimately requires a delicate mix of ingredients, carefully tailored to the particular needs of each legal market and the wider economy that it serves. I can only hope that Singapore's experiences will provide you with some insights into your own respective liberalisation plans.

Singapore's journey of liberalisation

(a) Introduction

8. What was the impetus for liberalisation? Demand for offshore legal services in Singapore can be traced to the establishment of the Asian Dollar Market in Singapore in 1968, when offshore US Dollars became the principal source of financing for foreign and domestic investments in the region.³ To meet the need for sufficient expertise in English law or New York law, the Government allowed foreign banks in Singapore to bring in

² Speech by Minister K Shanmugam at the ASEAN Day Reception, 2 Aug 2012, http://www.mfa.gov.sg/content/mfa/media_centre/press_room/if/2012/201208/infocus_20120802_03.htm

³ Legal Services Review Committee Report, June 1999, para 3.1.

their lawyers from New York, London and Hong Kong to provide legal services for Asian Dollar bonds, loan syndications and other offshore transactions in May 1981.⁴

9. From then on, Singapore was fairly liberal in terms of allowing entry to foreign law firms and lawyers from all over the world. In order to establish a presence in Singapore, foreign law firms of repute simply needed to obtain the Attorney-General's informal permission, which would typically be granted on the condition that the foreign firms did not practice Singapore law. There was no reciprocal entry requirement and the firms were not subject to any formal regulatory regime.⁵

(b) First stage: Liberalisation to support financial services (1997)

10. By 1999, there were more than 60 foreign law firms from over 15 countries with offices in Singapore, including many top-ranked firms from London and New York.⁶ Despite the significant offshore footprint in Singapore, however, foreign law firms and Singapore law firms operated largely within two separate and distinct spheres. Singapore law firms were regulated under our Legal Profession Act and focused on the practice of Singapore law. Foreign law firms were not regulated by any written laws and they were wholly engaged in providing offshore legal services, mainly to large banking and financial institutions. Where there were cross-border financial transactions involving both Singapore law and offshore law, Singapore law firms and offshore law firms would of course have to collaborate, but these collaborations were piecemeal, with hardly any transfer of knowledge or expertise.

11. The first steps towards liberalisation proper were taken in 1997, when the Singapore Government established a Legal Services Review Committee headed by the

⁴ Ibid, fn 22.

⁵ Legal Services Review Committee Report, June 1999, Annex C: "Foreign Lawyers – Conditions of Practice (as at 1.12.1997)". The Legal Profession Act only regulated the practice of Singapore law in Singapore.

⁶ Legal Services Review Committee Report, June 1999, para 3.10.

then-Attorney-General Chan Sek Keong to review Singapore's strategic legal needs in the financial sector, and the conditions under which foreign law firms and foreign lawyers could be allowed to operate in Singapore, in the context of ensuring Singapore's competitiveness in financial services.

12. It was clear from the Committee's terms of reference that the driving force for this review was not concern about the legal services sector *per se*. At the time, legal services were largely seen as a critical enabler, rather than a driver, of economic growth. The Committee's remit was to review how the existing legal infrastructure could be enhanced to support the targeted growth of Singapore's financial services sector, in particular, by ensuring that large banking and financial institutions based in Singapore would have convenient and efficient access to the highly specialised legal services required to support their complex offshore and cross-border financial transactions.

13. Part of the Committee's blueprint to enhance Singapore's competitive edge and strengthen legal capabilities in financial services was to: (a) attract more top quality foreign law firms and in-house counsel to Singapore for offshore work; and (b) intensify and formalise collaborations between foreign law firms and Singapore law firms for cross-border work.

14. With this in mind, the Government introduced Joint Law Ventures ("JLVs") and Foreign Law Alliances ("FLAs") into our Legal Profession Act in 2000. JLVs and FLAs were the first formal collaborative vehicles between foreign law firms and Singapore law firms. Once the JLVs and FLAs were registered with the Attorney-General's approval, qualified lawyers within these entities could provide legal advice on Singapore corporate and commercial law issues and thereby market themselves as seamless providers of legal services for cross-border financial work.

15. As far as profits were concerned, the constituent law firms in the JLVs and FLAs could generally share profits in any proportion subject to certain rules, the most important of which was that fees derived from Singapore law work could not be shared, and foreign law firms were expressly precluded from sharing in the profits of the constituent Singapore law firms.⁷

16. The attraction of the JLV and FLA models, in theory at least, was this. Although their primary aim was to enhance the efficiency of the supply of legal services to banking and financial institutions in cross-border financial transactions, it was hoped that a side benefit of such closer collaboration was that Singapore law firms would also be able to upgrade their legal expertise and develop more “cutting edge” legal knowledge and know-how through exposure to the more sophisticated legal work brought in by their JLV/FLA partner.

17. Initial reactions to the new regime were positive. Although foreign law firms could not practice Singapore law freely, most of them considered Singapore law work to be largely irrelevant to the legal services they were called to provide in the region anyway. For the foreign firms, the JLV/FLA model simply held the promise of allowing them to market themselves as full service international firms able to serve their clients in the region without restrictions.

18. On their part, Singapore law firms were also supportive as they recognised that this limited liberalisation was not intended to cannibalise their existing Singapore law practice, but to help them gain access to more sophisticated cross-border work whilst also giving them the opportunity to align themselves with top international firms and build up their brand names and intellectual legal capital in the process.

⁷ Legal Services Review Committee Report, June 1999, fn 8.

19. Within a period of 12 months, nine JLVs and three FLAs were established between prominent foreign firms and various large and medium-sized Singapore law firms with strong corporate practices.⁸ After the initial euphoria died down, however, there were some harsh realities to be faced. Within five years, three of the JLVs and all of the FLAs had dissolved, with two of the JLVs going their separate ways after less than a year.

20. This sobering report card led some critics to label the JLV and FLA models as failed experiments. I think that is not an entirely fair assessment. While the JLV and FLA models seemed perfect on paper, the truth was that like any other marriage, there were always going to be difficulties. As we all know, there is simply no way to legislatively guarantee the permanence of a union between two people, let alone two groups of highly competitive and motivated lawyers! The success (or failure) of each collaboration – as with any partnership – eventually boiled down to personal relationships and expectations, which could never be legislated.

21. While many of the collaborations fell short of their initial promise, there were also successful partnerships. The fact that six of the nine JLVs lasted for six years or more is a testament to the continued value that some firms found in the schemes.

22. More fundamentally, the introduction of JLVs and FLAs sent a signal to the rest of the world that the Singapore legal sector was getting ready to open its doors. Although the first steps to removing market access barriers were conservative and (some might say) not entirely effective, the fact that we even took those steps at all – at a time when the doors of most other legal markets in the region remained fully shut – gave us a significant first mover advantage in terms of perception in the international marketplace.

(c) Second stage: Further liberalisation to support strategic services sectors (2005)

⁸ Report of the Review Committee on Joint Law Ventures and Formal Law Alliances, January 2006.

23. In 2005, another Review Committee chaired by then-Attorney General Chan Sek Keong was tasked to reassess the JLV and FLA schemes in the context of ensuring the required legal support for the strategic services sectors of the economy.

24. From its comprehensive market surveys, the Committee found that the basic structures of the JLV and FLA models were not the cause of dissolution *per se*. Rather, the key causes included a mismatch of expectations, cultural differences, personality conflicts, differences in compensation scales between lawyers in foreign firms and local firms and the economic downturn following the 1997 Asian financial crisis.⁹

25. In light of these findings, the Committee saw no reason to modify the existing operating conditions for JLVs and FLAs. The Committee did however recommend two changes. First, arbitration was identified as an emerging strategic practice area ready for inclusion in the JLV and FLA schemes. The tremendous growth of our arbitration sector has been one of Singapore's most significant success stories in the legal sphere in recent years, and I will touch on it in greater detail later.

26. For now, what was more interesting were the Committee's other recommendations: to introduce tax and other incentive schemes to encourage Singapore-based law firms to take on more regional work, and to allow foreign lawyers to own up to 25% of total equity shares or profits in Singapore law firms. The Committee noted that with the saturation of the domestic legal services sector, Singapore law firms would have to regionalise to grow. Having foreign partners with a stake in the practice would be critical to this expansion, especially in the emerging economies of China and India.

27. This proposal was the first indication that legal services were now being seen not simply as an enabler of growth, but an opportunity for growth in and of itself.

⁹ Report of the Review Committee on Joint Law Ventures and Formal Law Alliances, January 2006, para 15(b).

(d) Third stage: Liberalisation to develop the Singapore legal sector (2006 to date)

28. The paradigm shift was complete with the appointment of the Committee to Develop the Singapore Legal Sector headed by Justice V K Rajah, Judge of Appeal, in August 2006. By this time, the Government had come to recognise that there was potential to develop the legal services sector as an engine of growth in its own right.

29. After undertaking a comprehensive review of the entire legal services sector, particularly in relation to exportable legal services, Justice Rajah's Committee made a number of bold suggestions which have since become the hallmarks of Singapore's unique legal services market.

30. Insofar as the JLVs were concerned, the Committee made the frank assessment that they had enjoyed limited success. Despite their integration as a single entity on paper, constituent foreign law firms in JLVs still operated in a "parallel dimension" – physically present but not connected to or engaged in the system. One critical factor that stifled the success of the JLV model was the fact that the foreign law firms were expressly precluded from sharing in the profits of the constituent Singapore law firms. Without full economic union, there was little incentive for the foreign law firms to align their business interests and practices with that of their Singapore partners. The Committee therefore recommended a new Enhanced JLV scheme, under which constituent foreign law firms would be allowed to share up to 49% of the profits of the constituent Singapore law firm within the permitted areas of co-operation.

31. However, the Committee was of the view that this would not be enough. As long as foreign law firms were not directly connected to the Singapore legal system, they would not have sufficient incentive to anchor their presence in Singapore and facilitate the growth of the domestic legal services sector. Moreover, there was a steady stream of

Singapore-qualified lawyers leaving to join foreign law firms both in their overseas offices as well as in Singapore. To reverse the brain drain and anchor the presence of foreign law firms in Singapore, the bold suggestion was made to allow a limited number of foreign law firms to obtain licences to practice Singapore law directly in certain permitted areas (later refined to mean basically every aspect of Singapore law except litigation and certain other “ringfenced” areas such as family law, conveyancing and probate law). This was a radical proposal that I can tell you met with no small amount of resistance from the local Bar. However, the Committee felt that this was essential in order for Singapore to retain its commanding lead on the liberalisation front.

32. The Government accepted the Committee’s recommendation, and the call for applications for the first set of Qualifying Foreign Law Practice licences (or “QFLPs”) was made in August 2008. In order to qualify, applicants had to make out a compelling case to show how allowing them to practise Singapore law would help to further the Government’s three main objectives of: (a) supporting Singapore’s key economic growth areas; (b) growing the legal services sector in Singapore; and (c) attracting and retaining talent in the legal services sector in Singapore.

33. Competition for the first set of QFLPs was fierce. Twenty proposals were received for the expected five QFLP licences to be awarded, with 12 of the 20 applicants ranked in the Global Top 100 law firms. In the end, the proposals were of such a high quality that six QFLPs were ultimately issued to: Allen & Overy, Clifford Chance, Herbert Smith, Latham & Watkins, Norton Rose and White & Case. Of the six, three are ranked among the top ten in the world in terms of revenue.¹⁰ The second round of QFLP applications has recently closed. Despite the challenging economic times, no less than 23 top foreign law firms have already put in their applications, so we can expect to see equally robust competition for this round as well.

¹⁰ Latham & Watkins (4th), Clifford Chance (5th) and Allen & Overy (8th), as ranked in the Am Law Global 100 2011.

34. In tandem with the enhanced QFLP model, the Government has also taken steps to allow foreign-qualified lawyers to practice Singapore law with the introduction of the Foreign Practitioner Examination (“**FPE**”), which allows experienced foreign lawyers to become qualified to advise on certain “permitted areas of legal practice” (essentially corporate and commercial law such as banking and finance, mergers and acquisitions and intellectual property law). This is intended to supplement our limited supply of local lawyers and allow law firms here – both local and foreign – to capture the talent and experience they need to meet market demand.

35. With effect from June this year, a further package of measures was also implemented to give Singapore law firms greater flexibility to develop and grow their capabilities and collaborate with foreign law firms to enhance their competitiveness. Singapore law firms are now allowed to give an increased share of profit and equity in their practices to foreign lawyers within their firms (up from 25% to 33%), while foreign law firms with an overseas foreign law practice will also be able to take a one-third profit and equity share in Singapore law firms. QFLPs are now also allowed to enter into JLVs or FLAs with Singapore law firms while still retaining their QFLP licences. This latest suite of reforms signals the seriousness of the Government’s commitment to develop the standards and capabilities of all aspects of the legal sector in Singapore.

Taking stock – critical success factors

36. While Singapore’s journey of liberalisation has not been without its share of speed bumps, it has by and large been a tremendous success, especially in recent years. While the number of foreign law firms in Singapore hovered at around 60-70 from 1999-2007, that figure has since swelled to 124. That is an astonishing increase of more than 70% in

the short span of five years. The number of registered foreign lawyers in Singapore has more than doubled during the same period, from 630 in 2007 to 1,304.¹¹.

37. I think the most critical factor behind the success of Singapore's liberalisation efforts has been the Government's ultimate vision that liberalisation would never be a zero sum game. The Government recognised very early on that competition was necessary in order for the legal services market to grow. However, the Government also recognised that we had to support Singapore law firms through the process, by helping them to regionalise and by enlarging the market for Singapore law across Asia.

38. Whilst many Singapore law firms may have been content to grow their practices locally in the past, the competition brought about by liberalisation wiped out any such inertia. With the saturation of the domestic legal market, Singapore law firms have now become increasingly regional, and even international, in their practice and outlook. Many of Singapore's most established firms, such as Rajah & Tann and Wong Partnership, have already expanded with regional offices in countries such as Malaysia, Indonesia, China, Vietnam and even the Middle-East. The increasing penetration of regional legal markets by Singapore law firms has been one of the positive side-effects of liberalisation.

39. As for growing the Singapore law market, a Committee was established to promote the international profile of Singapore law and Singapore as a centre for dispute resolution. Marketing efforts have been focussed on promoting Singapore as a neutral dispute-resolution venue and endorsing the use of Singapore law as an alternative to English or New York law whenever a neutral governing law for contracts is needed. I am happy to note that the Committee's efforts have already achieved a considerable amount of success.

¹¹ Figures from the Legal Profession Secretariat (as of 30 Sep 2012).

40. Let me now say a few words about arbitration because this is one of the success stories in the growth of legal services in Singapore to the benefit of both the domestic and foreign law firms. Singapore's phenomenal success in establishing itself as an international commercial arbitration hub is the direct result of a concerted collaborative effort by all stakeholders in the legal system. The Government has committed a huge amount of resources into building up the arbitration infrastructure in Singapore, with institutions such as the Singapore International Arbitration Centre ("SIAC") and Maxwell Chambers now enjoying international acclaim. We have an outstanding Bench that is extremely attuned to the needs of the arbitration sector, and this is reflected in the decisions the Singapore Courts make on whether/when to intervene in arbitral proceedings. We also have a very responsive Legislature which is not averse to introduce statutory amendments in order to ensure that our laws remain progressive and aligned with international best practices; at times, even legislatively overruling court decisions which may have been correct on the law but inconsistent with broader policy goals. The entire "ecosystem", as it were, is geared towards the promotion of arbitration, and the picture has been completed by the local and international Bar's enthusiastic embrace of arbitration in Singapore.

41. It is easy to fall into the trap of seeing liberalisation as a struggle between the Government imposing its will and domestic law firms protecting their turf. That would be a mistake. Singapore succeeded precisely because of the trust and co-operation between the Government and Singapore law firms, and this trust was earned because at each successive stage, the Government made its case for liberalisation whilst assuring the local Bar that the viability and standing of Singapore law firms would never be sacrificed. It was in Singapore's interest to ensure that we continue to have a strong and vibrant local Bar. So we always made sure that local law firms would have the time and space to grow and mature with the market before we took the next step. The decision to award QFLPs to foreign firms was only made in 2008 after the Government had assessed that Singapore law firms were ready to "level up" to the next stage of the competition.

42. I think that is of vital importance. At the end of the day, a strong and vibrant domestic legal services sector led by Singapore law firms is not only imperative to the strategic goal of enhancing Singapore's standing as a financial hub; it is in itself a sign of our coming of age as a sovereign, independent nation.

Liberalisation of legal services in South-east Asia

43. Turning to the liberalisation of legal services in South-east Asia, I note that Malaysia has already taken the first step towards liberalisation. Thailand, Vietnam and Indonesia have also allowed entry to foreign law firms to varying degrees. There is tremendous potential to be unlocked within these markets, and I look forward to hearing more about their liberalisation plans from you and my fellow panel members.

44. Given that Singapore started on this journey more than ten years ago, I hope that you have drawn some useful lessons from the experiences I have related today. The Singapore story is perhaps unique in some respects. We had to market ourselves as a hub because we had no natural resources and no large economic hinterland to depend on. What we did have was a hard-earned reputation for transparency, efficiency and integrity, a common law system primarily modelled on the English legal system and a robust and reputable local Bar. All of this made entry into the Singapore legal market a much easier proposition to sell to the dominant global suppliers of legal services from London and New York. Other countries with civil law backgrounds or greater language or cultural barriers should tailor their liberalisation strategies accordingly to capitalise on their own unique strengths.

45. In spite of the differences across our legal systems, however, I think that some of the key factors for success that I highlighted this afternoon are universal: (a) a high level of trust and co-operation amongst all stakeholders; (b) a progressive and carefully managed liberalisation plan to give local law firms time to mature and develop with the market; and (c) most importantly, a broader vision for how liberalisation will enlarge the legal services sector as a whole, backed up by concrete action plans. Underpinning all of this must be the most basic fundamentals of any legal system, namely, good governance, a strong belief in the rule of law and sound legal and judicial infrastructure.

Conclusion

46. Liberalisation is a journey, not a destination. Singapore is already thinking ahead and looking for new ways in which we can continue to further develop Singapore as a key regional centre for the provision of legal services. Along the way, I expect that we will also witness some consolidation of large and medium-sized local law firms in Singapore as they seek to sustain their positions in the intensely competitive space that is the Singapore legal market.

47. There is no doubt that in the next century, the global financial centre of gravity will move towards Asia. We are on the cusp of a brave new world right at our doorsteps, and we will do well to embrace it, before it leaves us behind.

48. Thank you.

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