

LIBERALISATION OF THE LEGAL PROFESSION

- SINGAPORE'S JOURNEY

By Mrs Koh Juat Jong

**“A lawyer without history or literature is a
mechanic, a mere working mason;
if he possesses some knowledge of these,
he may venture to call himself an
architect.”**

- Sir Walter Scott (1771 - 1832)

Overview

- ❑ Context of legal practice
- ❑ Three major exercises
- ❑ Current structure



The change in landscape

The world is flat - *Thomas Friedman*



GLOBALISATION

A vibrant global economy



needs a sturdy and effective Legal System

The change in legal landscape

Law is a domestic
product

Law becomes
increasingly
global in nature

Role of the legal system

- ❑ needs to deal with issues that cut across jurisdictions
- ❑ Players are in different countries
- ❑ Effects of the transactions are felt across the world

Emergence of international law

- ❑ Wider international obligations, e.g. WTO obligations
- ❑ Increasing harmonisation of laws across regions
- ❑ More regional and bilateral obligations, e.g. FTAs

The change in legal practice

Legal profession
as
a closed practice

Legal profession
opens up

The liberalisation route

In the 1990s

**Telecommunications
Industry**

Banking Industry

Insurance Industry

The liberalisation route

Starting from 2000

**Opening up of
the Legal Services
Sector**

Three important milestones

1999 Report of the Legal Services Review Committee

2005 Report of the Review Committee and the Report of the Third Committee on the Supply of Lawyers

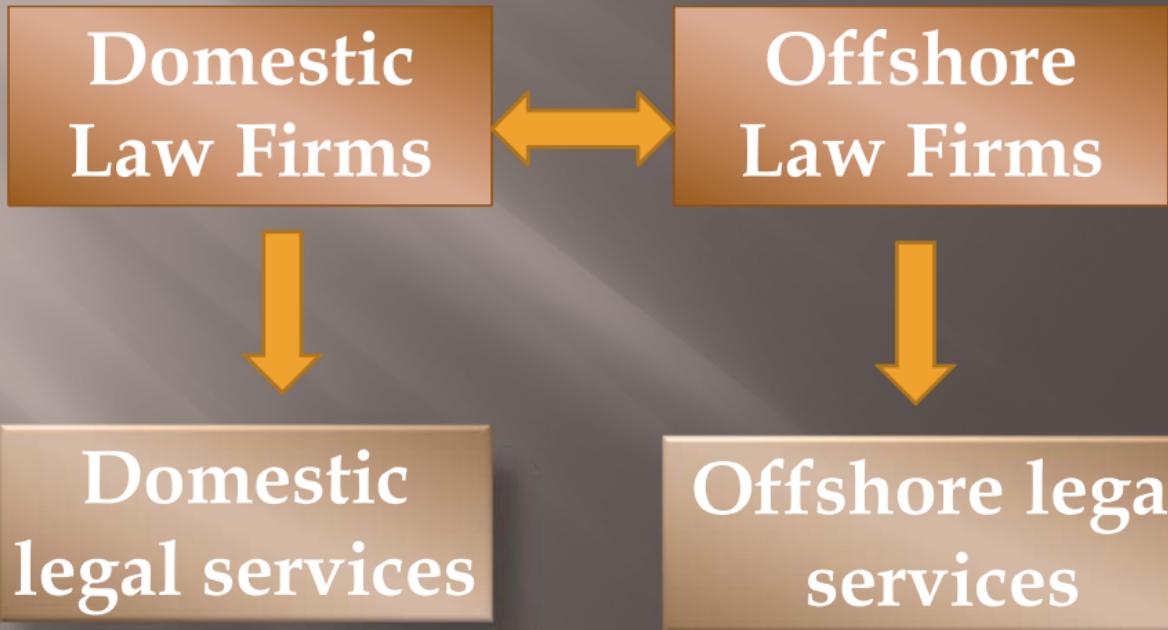
2007 Report of the Committee to develop the Singapore Legal Sector

Before 2000 -

- ❑ Foreign law practices may establish offices in Singapore
- ❑ They may practise offshore law freely
- ❑ They cannot practise Singapore law

- no requirement for reciprocity
- no restriction on the number of lawyers

Impetus is to support the development of Singapore as a regional financial centre



The First Step



The First Step

Mid 1997

Financial Sector
Review Group

Sept 1997

Legal Services
Review
Committee

Legal Services Review Committee

Chaired by then Attorney-General Chan Sek Keong

To review Singapore's strategic legal needs in the financial sector, and the conditions under which foreign law practices and foreign lawyers were allowed to operate in Singapore in the context of ensuring Singapore's competitiveness in financial services.

Recommendations of the Legal Services Review Committee

In order for Singapore to have a more vibrant legal services sector

Singapore should attract more top-ranking offshore law practices to locate their regional practices in Singapore

Singapore should encourage offshore law practices to locate more top end legal expertise in Singapore to support the origination, development and adaptation of the strategic financial products

Singapore should encourage in-house legal departments of global banking and financial institutions to relocate to Singapore

new one-stop shop vehicles

**Singapore
Law
Practice**

**Joint Law
Venture
(JLV)**

**Formal Law
Alliance
(FLA)**

**Foreign
Law
Practice**

JLVs and FLAs

- ❑ The lawyers may draft documents relating to transactions involving the law or regulatory regime of more than one country or jurisdiction
- ❑ They may not appear in local courts
- ❑ The local and foreign law practices in a JLV and a FLA may share office premises, market themselves as one-stop service providers, and bill their clients as if they are a single entity
- ❑ Difference is that a JLV is a separate business entity from the constituent law practices, while a FLA is not

Approach was cautious

- ❑ Each JLV and FLA must be approved by the Attorney-General
- ❑ Constituent law practices need a good track record in selected areas of legal practice
- ❑ Business plan to set out objectives and manner of technology transfer to the domestic law firms

Joint Law Venture

Constituent Foreign Law Practice

Must supply at least 5 resident lawyers

Each has at least 5 years' experience in banking, finance or corporate work

At least 2 of whom must be equity partner or directors of the constituent foreign law practice

Constituent Singapore Law Practice

Must supply at least 5 lawyers

Each has at least 5 years' experience in banking, finance or corporate work

At least 2 of whom must be equity partner or directors of the constituent Singapore law practice

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Formal Law Alliance

Constituent

Foreign Law Practice

Must supply at least 5 resident lawyers

Each has at least 5 years' experience in banking, finance, corporate, technology, telecommunications work

At least 2 of whom must be equity partner or directors of the constituent foreign law practice

Constituent

Singapore Law Practice

Must supply at least 5 lawyers

Each has at least 5 years' experience in banking, finance, corporate, technology, telecommunications work

At least 2 of whom must be equity partner or directors of the constituent Singapore law practice

The Second Move



The Second Move

2005

**Review
Committee**

**Third Committee
on the Supply of
Lawyers**

Review Committee

Chaired by then Attorney-General Chan Sek Keong

To review the JLV and the FLA schemes and to consider modifications to ensure the required legal support for the strategic services sectors of the economy.

Recommendations

New areas of practice
allowed for JLVs
and FLAs

Arbitration

Intellectual Property law

Maritime law

Any other area of legal or
regional work as may be
approved by the Attorney-
General

Recommendations

Foreign lawyers may own equity interest in, and share profits of, a Singapore law practice up to the limit of **25%**

Recommendations

New areas of practice allowed for JLVs and FLAs

Consensus

Arbitration

In 2004, foreign lawyers could already appear in arbitration matters involving Singapore law

Intellectual Property Law

Contentious

Maritime Law

Recommendations

Arbitration

Intellectual Property Law

New areas of practice
allowed for JLVs
and FLAs

Maritime Law

Insurance and
Reinsurance Law

Construction and
engineering Law

Tax law

Trade and
competition law

Recommendations

Foreign lawyers may own equity interest in, and share profits of, a Singapore law practice up to the limit of **25%**

To help attract and retain experienced and talented foreign law expertise in Singapore law practices

The Third Push



The Third Push

2007

**Report of the
Committee to
develop the
Singapore Legal
Sector**

Committee to develop the Singapore Legal Sector

Chaired by Justice V K Rajah

To undertake a comprehensive review of the Singapore legal services sector to ensure that Singapore remains at the cutting edge as an international provider of legal services both in the short term and in the long run

Recommendations

Legal Education

Professional matters,
fees and discipline

Development of
Singapore as a key
legal services hub

Liberalisation of the
legal profession.

Difference in approach

- ❑ Not only to provide support to other economic sectors
- ❑ Also adopted the vision of developing Singapore as a regional centre for legal services
- ❑ Took interest in promoting the use of Singapore law
- ❑ Concerned about providing opportunities for Singapore lawyers

**Singapore
Law Practice**

Joint Law Venture

**Foreign Law
Practice**



**Enhanced
Joint Law Venture**

foreign law practice may share up to **49%** of
profits of the Singapore law practice

May directly hire
Singapore qualified
lawyers

Partners from constituent Singapore law
practice may hold partnership positions in the
constituent foreign law practice

Foreign Law Practice

Qualifying Foreign Law Practice (QFLP)

A selected number to be licensed

May hire Singapore qualified lawyers to practise Singapore law in the permitted areas of practice

Must demonstrate a concrete commitment to enhance Singapore's status as a regional legal hub

Rationale for the changes

- ❑ Help meet the needs and demands of Singapore's economy which has become more diversified and broad-based
- ❑ Increase and change in the volume and types of international cross-border legal work
- ❑ To ensure Singapore remains attractive for high quality local and foreign legal talent

Challenges



Minister for Law Mr K Shanmugam *in Parliament*

whether the policy makers -
should protect the local law practices in their
current structure and deny, if necessary, the
opportunities for younger lawyers, and deny
the request of the consumers in order to
preserve the existing benefits, or
should move in a way that the local law practices
would be able to compete and, at the same
time, open up the choices for the consumers
and the younger lawyers.

Minister for Law Mr K Shanmugam *in Parliament*

It was a question of judgment where the balance should lie and the Government had decided to take the approach it felt was right, based on the calculation and judgment of a number of factors which could not be objectively quantified.

Current Licensing Regime

- ❑ Qualifying Foreign Law Practice
- ❑ Joint Law Venture
- ❑ Formal Law Alliance
- ❑ Licensed Foreign Law Practice
- ❑ Representative Office

Current Licensing Regime

- ❑ Qualifying Foreign Law Practice – **6** (approved)
- ❑ Joint Law Venture - **6**
- ❑ Formal Law Alliance - **2**
- ❑ Licensed Foreign Law Practice - **89**
- ❑ Representative Office – **3**

as at 17 March 2009

Representative Office

- ❑ Need to register with Attorney-General
- ❑ May do liaison or promotional work
- ❑ Not permitted to provide legal services or conduct any other business activities in Singapore

Licensed Foreign Law Practice

- ❑ Free to practise foreign law in any area of legal practice
- ❑ No restriction on the number of foreign lawyers
- ❑ May employ Singapore-qualified lawyers to practise foreign law

- ❑ Cannot practise Singapore law except in the area of arbitration through Singapore-qualified lawyers employed by the practice and registered for that purpose with the Attorney-General
- ❑ The area of arbitration practice : representing a party in arbitration proceedings and giving advice, preparing documents and rendering other assistance in relation to such arbitration proceedings, or working on relevant arbitration agreement which provides for Singapore as the place of arbitration or the use of Singapore law in the arbitration etc

Formal Law Alliance

- May comprise more than one foreign law practice and more than one Singapore law practice
- The foreign law practices and the Singapore law practices must each have relevant legal expertise and experience in the following areas of legal practice
 - Banking law
 - Finance law
 - Corporate law
 - Technology law
 - Telecommunication law
 - Arbitration
 - Intellectual property law
 - Maritime law
 - Any other areas of legal practice that facilitate or assist in the growth and development of the Singapore economy

Formal Law Alliance

Constituent

Foreign Law Practice (s)

Must supply at least 5 resident lawyers

Each has at least 5 years' experience in banking, finance, corporate, arbitration, IP, maritime, technology or telecommunication law

At least 2 of whom must be equity partner or directors of the constituent foreign law practice

Must submit a plan to provide for the transfer of legal and other related skills, expertise, know-how or technology of the foreign law practice to the Singapore law practice

Constituent

Singapore Law Practice (s)

Must supply at least 5 lawyers

Each has at least 5 years' experience in banking, finance, corporate, arbitration, IP, maritime, technology, or telecommunication law

At least 2 of whom must be equity partner or directors of the constituent Singapore law practice

Formal Law Alliance

- ❑ No separate legal identity
- ❑ It may market or publicise itself as a single service provider competent to provide legal services in all areas in which the constituent law practices are qualified to provide
- ❑ It may bill its clients as if it were a single law practice

Joint Law Venture

- ❑ Must be constituted by one foreign law practice and one Singapore law practice
- ❑ Either as a partnership or a company
- ❑ The foreign law practice and the Singapore law practice must have relevant legal expertise and experience in the following areas of legal practice
 - Banking law
 - Finance law
 - Corporate law
 - Arbitration
 - Intellectual property law
 - Maritime law
 - Any other areas of legal practice that facilitate or assist in the growth and development of the Singapore economy

Joint Law Venture

Constituent Foreign Law Practice

Must supply at least 5 resident lawyers

Each has at least 5 years' experience in banking, finance, corporate, arbitration, IP and maritime law

At least 2 of whom must be equity partner or directors of the constituent foreign law practice



Constituent Singapore Law Practice

Must supply at least 5 lawyers

Each has at least 5 years' experience in banking, finance, corporate, arbitration, IP and maritime law

At least 2 of whom must be equity partner or directors of the constituent Singapore law practice

Must submit a plan to provide for the transfer of legal and other related skills, expertise, know-how or technology of the foreign law practice to the Singapore law practice

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Joint Law Venture

JLV may hire Singapore-qualified lawyers to practise Singapore law

number of Singapore-qualified lawyers practising Singapore law



number of lawyers (foreign or Singapore qualified) practising foreign law

foreign law practice may share in up to 49% of profits on Singapore law practice in the permitted areas of practice

Singapore-qualified lawyer may concurrently be a partner or director of the constituent Singapore law practice and of the JLV or the constituent foreign law practice

Joint Law Venture

Permitted areas of practice of Singapore law

All areas of legal practice, except for the following:

- Constitutional and administrative law
- Conveyancing
- Criminal law
- Family law
- Succession law
- Trust law (where the settlor of the trust is an individual)
- Appearining, pleading or representing any party before any Singapore court, or appearing before any quasi-judicial or regulatory body, authority or tribunal, except where otherwise permitted by any written law
- Giving advice, the main purpose of which is to advise the client on the conduct of any proceedings instituted before any Singapore court.

Qualifying Foreign Law Practice (QFLP)

It may practise Singapore law through Singapore-qualified lawyers in the permitted areas of legal practice

The permitted areas of legal practice of Singapore law are the same as those for JLVs

Qualifying Foreign Law Practice

Permitted areas of practice of Singapore Law

All areas of legal practice, except for the following:

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Qualifying Foreign Law Practice (QFLP)

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The permitted areas of legal practice of Singapore law are the same as those for JLVs

The number of Singapore - qualified lawyers registered to practise Singapore law

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4 times the total number of foreign lawyers and Singapore-qualified lawyers registered to practise foreign law

Qualifying Foreign Law Practice

- ❑ In August 2008, applications were opened for QFLP licenses
- ❑ 20 proposals were received
- ❑ 6 licences were awarded
- ❑ All of them are within the top 100 global firms and 4 out of the 6 are within the top 10 global firms
- ❑ The selected law practices will set up the QFLPs by June 2009

QFLP Evaluation Process

- Evaluation Committee chaired by PS (MOF) and comprising MD (MAS), PS (MTI), PS (Law) and SG
- The shortlisted applicants were interviewed
- Recommendations were made to the Attorney-General
- AG reviewed the recommendations with Minister for Law and the Selection Committee comprising Senior Ministers of State of the Ministry of Law, MOF/MOT and MTI.

QFLP Evaluation Criteria

- ❑ The value of offshore work that the Singapore office would generate
- ❑ The number of lawyers who would be based in Singapore
- ❑ The areas of legal practice that the Singapore office would offer
- ❑ The extent to which the Singapore office would function as a headquarters for the region
- ❑ The applicant's track record globally and in Singapore

Economic benefits expected

- ❑ Generate offshore revenues
- ❑ New manpower commitments
- ❑ Both are expected to double over 5 years in a conservative projection
- ❑ New areas of legal practices to support key economic sectors, in particular, the finance, corporate and maritime sectors
- ❑ Maintain Singapore as a top arbitration centre
- ❑ Enhance Singapore as a regional legal centre
- ❑ Provide opportunities to Singapore-qualified lawyers

The Journey ahead

- ❑ It has been a calibrated and measured approach
- ❑ The progress and outcomes of the recent new initiatives will be closely observed
- ❑ The next steps will similarly be calibrated and measured



The Vision painted

"We want our local lawyers in Singapore law firms, in foreign law firms, we want them to be world-class and we want them to get the best training and exposure possible.

We would like a vibrant, cosmopolitan legal sector where foreign law firms and Singapore law firms compete on even terms and add to the vibrancy and the potential of our status as an international legal market.

We want all of these to create a situation where our economy receives a boost and the kind of support that it deserves from the legal profession ... "

Mr K Shanmugam
Minister for Law

Thank You