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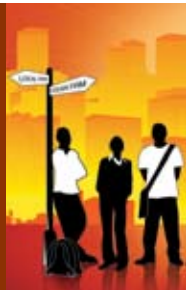
THE GLOBAL LAWYER:
What's the Next Stop?

inter se

MICA (P) 226/04/2008

Academy Publishing



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JULY–DECEMBER
2008

INTER SE is a bi-annual publication of:

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GLOBALISATION: a phenomenon that has taken the world by storm. So what exactly is globalisation? Globalisation has been defined as internationalism (p 4 *ff*). Thomas Friedman has described it as the process of removing historical, regional, geographical divisions, thereby creating a level playing field, a flat world where all compete equally. We would define it as international integration, a world without borders, and in the legal context that would mean an outward flow (exporting) and an inward flow (liberalisation) of legal services with fewer restrictions.

However differently one defines globalisation, not one has denied its occurrence, declared he or she has seen the last of it, nor claimed to be unaffected by it. The effects of globalisation on, *inter alia*, politics, the environment, culture, may evoke such polar opposite reactions. Creation of international associations and bodies to govern the world is welcomed; yet individual nations fear loss of sovereignty. Increased international co-operation on climate change; yet others lay blame on globalism and free trade for increased pollution. Growth of cross-cultural contacts and understanding; yet critics see it as a catalyst for cultural identity loss and a homogeneous "world culture". How do lawyers see globalisation?

Our issue seeks to understand a little more of the effects of globalisation. How prevalent is it in legal practices worldwide? We focus in on specific countries, such as Singapore, Korea and Vietnam, and liberalisation in particular. We delve into the minds of our local law firms to garner insight on how they are managing this change and their views on going global. We also feel out sentiment amongst some foreign law firms on the proposed opening of the Singapore legal market. Corporate counsel have also been approached for their role in shaping the legal services market. In Asia, a new world is opening up around us. Where has liberalisation taken others; how will it affect Singapore lawyers? As clients move into the region, is regionalisation an inevitable path for our law practices? Will Singapore law promote Singapore legal services? How should lawyers and law students prepare themselves for the future? Well, we can only afford a stab in the dark, and deduce the qualities requisite to remain relevant in this borderless world.

For any global lawyer aspirant, are innovate and adapt the axioms to live by?

Warm regards,

Serene Wee

INTRODUCING "GLOBALISATION"

By **The Honourable Justice Choo Han Teck, Supreme Court of Singapore**

> "Why then, the world's mine oyster,
> Which I with sword will open."[1]

THE epoch of globalisation cannot be accurately dated because there is no consensus as to when and where it began, and also because "globalisation" has a wide and diverse meaning. Some may assert that "globalisation" is just a new name for "internationalism", but there is a valid defence for preferring globalisation where the process of change occurred (and continues to occur) on a worldwide basis. "International" was accurate for its time, connoting a crossing of nations. What it lacked was the impact of numbers and geographical width. The participation of a dozen nations counted comfortably as a cluster of "internationals" in the old sense. "Global" exudes an impression of an adventure involving the entire orb of earth, encompassing all humans – the rich and the poor, and therefore, there arises much tension between nationalism and globalisation.

Thus, whereof does the scholar begin to examine globalisation in the context relevant to his study? Robert Fine offered a view, "The age of cosmopolitanism may be understood more as a normative

1 William Shakespeare, *The Merry Wives of Windsor* (The Arden Shakespeare, 1998).

perspective for viewing the potentialities and necessities of our age than as an objective characterisation of the age itself. The cosmopolitan vision may be understood in this context as spelling out the rational direction humankind would take so long as artificial measures are not adopted to prevent the outcome."[2]

Globalisation, as a process, implies occurrences – past and future ones. If globalisation is a process that involves the entire world and all its inhabitants, man and mandrill alike, one might be forgiven for asking if the use of the phrase "responding to globalisation" makes sense at all, for one does not respond to a process if he is part of the process. It is a process that involves the individual human being as well as the individual nation, and, collectively, as humans and nations of the world. It is a process as powerful as it is imperceptible; like the precise moment when a bud blossoms into a flower.

There are pleasurable and happy consequences of globalisation. Kwela music from the Soweto String Quartet is played in the same concert hall as the orchestras that play Haydn's "Creation"; rock musician Paul Simon incorporates penny whistle music to his "Graceland" album; and a shakuhachi player blows tunes from the music of the Beatles. Yet, ethicists are concerned with the impact of globalisation on moral conduct; whilst environmentalists are concerned with its impact on natural resources. Such are some of the examples of globalisation as "shifting forms of human contact".[3]

Another magnificent effect of globalisation is that knowledge and information are created in massive forms, and disseminated swiftly, creating in turn the perception of "a shrinking world". The customer 10,000 km away is as near as the customer who lives next door; whilst the ease of communication facilitates the spread of masses of information thus making hype appear so mundane and unnoticeable.

From the perspective of law in a global context, what is globalisation doing to law and legal systems across the world? This is a question that requires very deep and careful analysis. From the perspective of the common law lawyer, he might want to begin by examining, in context, how many lawyers practice in common law countries? Is the common law

2 Robert Fine, *Cosmopolitanism* (Routledge, 2007) at p 19.

3 Manfred B Steger, *Globalization: A Very Short Introduction* (USA: Oxford University Press, 2003).

of common law country *x* the same as the common law of country *y*? Should he export common law or import civil law, or should he create an admixture of both? Furthermore, what does he do with tribal law of country *z* – does it count? Can laws and legal systems and practices be exchanged in pieces without bringing down the foundation on which they are built? And so, the intellectual who sets out to find answers to these questions best heed the words of Fine who warned against "the fallacy of presentism" – the "tendency to turn the present into an 'ism' and prematurely declare the redundancy of old concepts and theories".[4]

Unless we understand what this process we call "globalisation" truly and fully means, we are merely indulging ourselves the pleasure of that word without knowing the difference between a virtual rock and a rock. When we reflect upon such an awesome process, we need to take into contemplation all the thoughts that we conceive, and all the acts that we do when we declare them done in aid of, or as responses to globalisation; and be clear, very clear, as to what exactly we had in mind when we so declare. *is*

4 Robert Fine, *Cosmopolitanism* (Routledge, 2007) at p 9.

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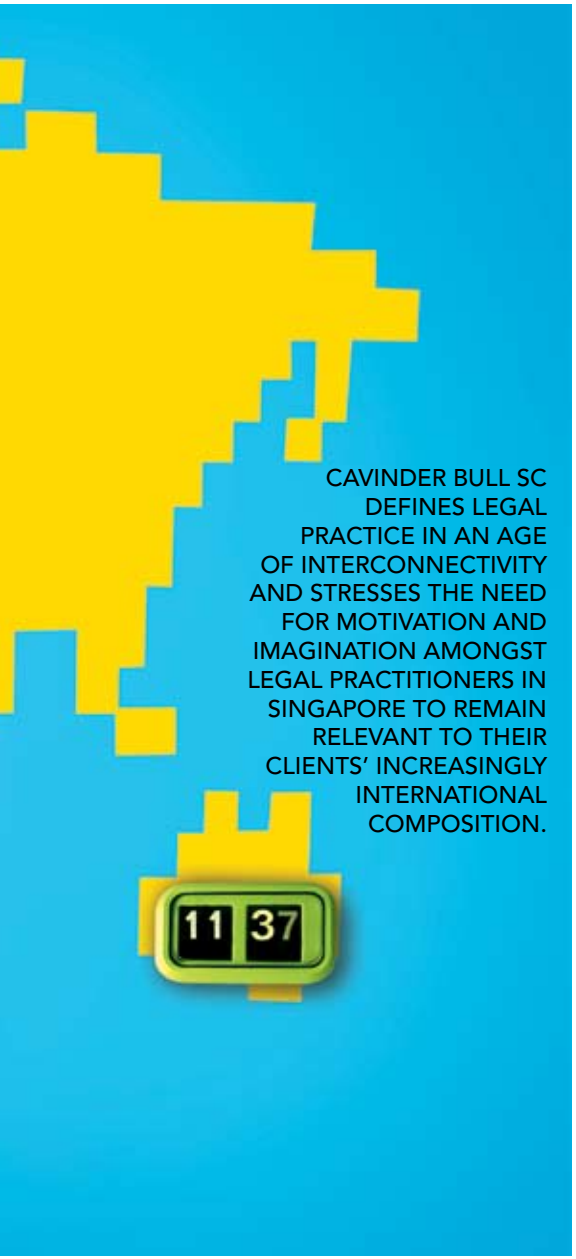
GLOBALISATION IN PRACTICE

OUR CRAFT AND CLIENTS IN A FLATTENING WORLD

By **Cavinder Bull SC, Legal Practitioner**



CAVINDER BULL SC DEFINES LEGAL PRACTICE IN AN AGE OF INTERCONNECTIVITY AND STRESSES THE NEED FOR MOTIVATION AND IMAGINATION AMONGST LEGAL PRACTITIONERS IN SINGAPORE TO REMAIN RELEVANT TO THEIR CLIENTS' INCREASINGLY INTERNATIONAL COMPOSITION.

INTRODUCTION

Businesses all over the world have been coming to grips with the realities of globalisation. No longer are businesses thought of in nationalistic terms in a world where "German companies" own British car makers, a Frenchman leads a "Japanese company", an Indian heads an "American bank", and Arsenal Football Club fails to field a single Englishman. Globalisation has meant that the search for talent, for affordable labour and for consumers with significant disposable income transcends national borders as never before.

As globalisation has an impact on our clients, it necessarily affects our practice as lawyers. True, lawyers are in some sense jurisdictional creatures. As Singapore lawyers, our core competency will of course be in the provision of Singapore law advice. However, our practices are moulded much more by the dynamic nature of our clients' evolving needs for legal services than by the foundational premise of our basic qualification. To put it another way, it is not where we start but where we are going. Lawyers have always followed their clients. As globalisation brings our clients new challenges, it is important that Singapore lawyers remain relevant to our clients by appreciating these new challenges and understanding how we can continue to provide counsel in that vibrant environment.

To a large extent, our profession is already responding to globalisation. It is not uncommon for me to receive e-mails from fellow directors of my firm saying that they are travelling to various countries for work. They may be in Germany to consult an expert; in Jordan to take a witness statement; in Hong Kong to meet with government regulators; in Geneva to meet with instructing lawyers; in China to meet a client about an upcoming arbitration; or in Brunei for negotiations.

I have no doubt that this is typical of the practice of many other Singapore firms as well. As our clients' businesses become more international, they inevitably have legal problems which are cross-border in nature. Even when they seek Singapore law advice, often that advice needs to be given with a full appreciation of the globalised context of today's businesses.

OUR CLIENTS ARE AFFECTED BY GLOBALISATION

The extent to which globalisation might have an impact on the needs of our clients can be illustrated by a hypothetical. A Singapore company decides to design and manufacture a new mobile phone. The company sells its products in Singapore and then starts exporting its products to countries in the region, contracting to supply its products to companies in Indonesia, the Philippines and Thailand. After these initial years of success, the company ventures further afield. Breaking into the Chinese market with a local partner, the company achieves cost savings by setting up a production plant in China. Another plant is later set up in India. Products manufactured in China and India are sold in China and India, and also exported to fill the contracts with purchasers in Indonesia, Thailand and the Philippines. Soon 80% of the company's revenue is generated by products manufactured and sold outside Singapore. The company's success sees it listed on the Singapore stock exchange.

Some years later, Indian labour laws result in an investigation into the company, causing a severe adverse effect on the share price of the company in Singapore. Ultimately, the investigation amounts to nought. Just when things appear stable, the company has a dispute in China with its local partner. In the midst of that, a large European company dumps a huge amount of a competing product into the Chinese market at predatory prices. The company lodges an anti-dumping complaint with the Chinese anti-trust authorities, and also with the European Commission. After two years, the European Commission finds the European company liable but the Singapore company's Chinese plant has been forced to close and is now under liquidation under Chinese law. With the closure of the plant in China, the Singapore company is unable to meet its contractual obligations to supply its purchasers in Indonesia, the Philippines and Thailand. They file suit in Singapore for damages and subsequently seek the company's winding up.

As the CEO (chief executive officer) of the Singapore company led his corporation through such ups and downs, who did he turn to for legal advice and counsel? In the beginning, his Singaporean lawyer would have advised him on the local (*ie*, Singaporean) part of his business. This would have included helping to set up his company, drafting his initial supply contracts, preparing his employment contracts and drafting contracts of sale to retailers in Singapore, Indonesia, Thailand and the Philippines. These are all necessary legal services.

However, as the bulk of the company's revenue started to originate overseas, the CEO's challenges became more global. The supply of products under a contract between

a Singapore company and its Indonesian purchaser was affected by labour laws in India and anti-trust laws in China. Here, there would have been a need for legal counsel who could transcend jurisdictional boundaries. Of course, the Singapore lawyer cannot practise or advise on Chinese or Indian law. However, he needs to be in a position to identify foreign law issues, to help the client seek timely advice and, most importantly, to synthesise that advice into coherent counsel for his client. To the extent that the Singapore lawyer has this ability, he is a true asset to his client.

Even in advising on Singapore law issues, the Singapore lawyer needs to understand the global developments affecting the company. In advising whether a stock exchange announcement needs to be made, the Singapore lawyer needs to be able to appreciate the significance of anti-dumping laws in China and the nature of trade union disputes in India.

While the client may understand the globalisation of his business, he may not appreciate the complexities arising from the interface of different legal systems that globalisation naturally forces upon his business. Those complexities cannot be fully appreciated simply by getting piecemeal advice from lawyers in different jurisdictions. At the end of the day, someone needs to pull the legal threads together. To the extent that we do not do this for our clients, they will either seek out lawyers from other jurisdictions who are more than willing to play this role, or worse, our clients will simply lack the comprehensive legal advice they need to prosper in a highly competitive world. Either way, we would have failed to meet our clients' expectations.

It should be apparent, from the example above, that there are two approaches that one can take when globalisation manifests itself in our clients' need for legal services. We can shy away from its complexities or we can seize the opportunity to "go global" with our clients, turning our problem-solving skills as lawyers to a new set of issues. Desire and legitimate ambition, though, are not sufficient to equip us to assist our clients in the global marketplace. As Thomas L Friedman warns, "The world is being flattened. I didn't start it and you can't stop it, except at great cost to human development and your own future … If you want to grow and flourish in a flat world, you better learn how to change and align yourself with it."[1]

NEW MINDSETS AND SKILL SETS

Aligning ourselves with our clients' flattening world requires not just a new mindset. Certain skills are of additional significance in helping us to evolve from the traditional or conservative model of a jurisdictionally limited lawyer.

Our clients who are facing the forces of globalisation will not be assisted by lawyers who see themselves as "just" Singapore lawyers. We limit ourselves and our ability to help our clients when we draw strict

1 Thomas L Friedman, *The World is Flat: A Brief History of the Twenty-First Century* (New York: Farrar, Straus and Giroux, 2005) at p 469.

jurisdictional boundaries for our problem-solving skills. An important part of providing legal advice is identifying the relevant facts upon which that advice will be given. With a broadened mindset, we will look for those relevant facts not just within our jurisdiction, but globally. The mindset change requires us to understand that often a full appreciation of our clients' global business is necessary in order for us to solve our clients' legal problems.

However, having a mindset that is open to the realities of globalisation is not enough. In a globalisation context, there are skills that warrant emphasis. For example, we need the ability to understand different legal systems. There is no reason why our clients will limit their businesses to common law jurisdictions. The ability to understand the basics about other legal systems, for example, civil law systems or Islamic legal systems, allows us to fully comprehend the global legal environment our clients operate in. Comparative law needs new emphasis as part of our legal education.

Another area of law which will continue to grow in importance is that of private international law. As cross-border transactions and disputes naturally grow in number, resolving conflicts of laws will increasingly become the linchpin of our legal analysis. In this area, developments of the law will have to be closely watched as judges and the legislature themselves necessarily acknowledge globalisation.[2]

There will also be a greater need for lawyers to be familiar with international conventions and treaties. Those who practise in the area of international arbitration have to be familiar with the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (10 June 1958) ("the New York Convention"). It is the New York Convention which provides the framework within which arbitral awards are enforceable in more than 100 different countries. Lawyers will also have to be familiar with the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (18 March 1965) and the procedures of the International Centre for Settlement of Investment Disputes ("ICSID"). ICSID arbitrations and conciliations can be important when our clients invest in developing countries. These are examples of the many international conventions which our globalising clients will expect their lawyers to be familiar with. The Law Society of Singapore has also identified this as an area of importance with the formation of the Public and International Law Committee. The Committee's work will likely extend to educating lawyers on pertinent international conventions and treaties.

We also need to develop an understanding of the cultures that our clients operate in. This allows us to contextualise our thinking within the unique cultures where our clients' legal problems originate. To be effective, our clients need to understand the culture they are

2 See, for example, *Rickshaw Investments Ltd v Nicolai Baron von Uexkull* [2007] 1 SLR 377.

conducting business in. Likewise, we need to jettison parochialism and arm ourselves with knowledge of different countries and their regulatory and business cultures. We will then better understand counterparts in negotiations and communicate more effectively with lawyers in those jurisdictions. One useful way of achieving this is through participation in international bar associations which naturally provide an avenue to interact with lawyers from other cultures.

We also need to have the adaptability to turn advocacy skills to use in more diverse forums. Traditionally, we learn our advocacy in court and in arbitrations. A different type of practical advocacy takes place in corporate boardrooms where deals are negotiated. However, our clients now also need us to be their advocates in "unusual" places. We may well be asked to accompany clients to meetings with the Ministry of Commerce in Cambodia, or to negotiate with a labour union in the Philippines. The ability to adapt basic advocacy skills to new and unfamiliar forums can be a significant contribution to our clients.

It is necessary to moderate the views above by acknowledging that there are areas of law which will be affected much less, if at all, by the forces of globalisation. Singapore will still need lawyers who can provide basic legal services to the man in the street. This is very important and is a duty which the legal profession must not fail to fulfil. The drafting of a Will or a simple contract, getting a divorce or a personal protection order, the conveyance of a private or commercial property, or the registration of an intellectual property right in Singapore, will require a good understanding of the laws of Singapore and are services which may be rendered to clients without globalisation affecting the process significantly.

However, so pervasive are the effects of globalisation that one can never discount the possibility that there might even be an international dimension to such work. After all, the Will might have to deal with assets located overseas, the divorce could involve a foreigner, or the intellectual property rights may subsequently need to be asserted overseas.

The fact of the matter is that our clients are increasingly being affected by globalisation. We can and should see that as an opportunity to participate in an exciting adventure.

CONCLUSION

Earlier this year, I sat down in a room in Bermuda with a liquidator from the Cayman islands, a lawyer from Geneva, a client from Egypt, a solicitor from England, an attorney from Michigan, and a mediator from Virginia. We discussed litigation presently pending in various jurisdictions including two ongoing actions in the High Court of Singapore. This is the reality of legal practice today.

Whether our clients like it or not, their businesses are affected by globalisation. If we continue to be motivated by a desire to remain relevant to our clients and to help them with their legal needs, then we have to be global in our approach to our practice of law. Only then will our profession continue to be well placed for the future. *IS*

WHY LIBERALISE?

CENTRAL
SINGAPORE

IN SEPTEMBER 2007, THE COMMITTEE TO DEVELOP THE SINGAPORE LEGAL SECTOR, TASKED TO UNDERTAKE A COMPREHENSIVE REVIEW OF THE ENTIRE LEGAL SERVICES SECTOR, RELEASED ITS FINAL REPORT. WHAT WAS THE THINKING THAT WENT INTO THE RECOMMENDATIONS AND THE RATIONALE FOR THE NEED TO REVIEW THE CURRENT LEGAL SERVICES IN SINGAPORE, ESPECIALLY WITH REGARD TO LIBERALISATION? FIND OUT MORE.

By **Sundaresh Menon SC and Paul Tan, Members of the Committee to Develop the Singapore Legal Services Sector**

SINGAPORE is a country of foreigners turned locals. Our economic success is largely owed to our having convinced foreigners and foreign companies to use Singapore as a base for their regional activities. But as other countries also market themselves aggressively as regional bases, Singapore has had to devise incentives to keep

these companies rooted here. With modern communication and travel technology, Singapore's geographical and infrastructural advantages may no longer be sufficient to attract foreign businesses. For example, in order to attract international banks to locate their regional offices in Singapore, the banking sector was liberalised in 1999 when Qualified Banking Licences were issued to international banks, allowing them access to the domestic retail market. This put them on the same footing with local banks for the first time and has turned out to be extremely beneficial for Singapore. Not only do customers now have wider choice, local banks have bravely responded by innovating and upgrading their capabilities. They have also expanded their clientele by regionalising.

One key question for the Committee to Develop the Singapore Legal Sector ("the Committee") appointed by S Jayakumar, Deputy Prime Minister of Singapore, and chaired by The Honourable Judge of Appeal, Justice V K Rajah, was whether the legal services sector, as with other service industries, should, in a measured way, be liberalised. Would the same benefits that have attended the liberalisation of other service industries equally accrue to the legal services sector, or would liberalisation do more harm than good?

STATUS QUO

Presently, Singapore law firms ("SLFs") and foreign law firms ("FLFs") exist in parallel dimensions. Except when in a joint law venture ("JLV"), the domestic market is effectively closed to the FLFs. The size of the FLFs here pales in comparison to those in our main regional competitor, Hong Kong, which has one of the most liberal regimes as far as legal services are concerned. The number of foreign lawyers in Singapore has increased but marginally over the years. The number of FLFs in Singapore has also remained relatively constant since 1997. Interestingly, while the number of FLFs and foreign lawyers has remained largely uniform, Singapore-qualified lawyers have been moving to Singapore-based FLFs at a fast increasing pace from 15 in 2000 to 119 in 2007.

These statistics suggested a number of trends that concerned the Committee. First, it seemed clear that Singapore's position as a legal hub was at risk.

This would only be exacerbated as other major economies such as India and South Korea liberalise, as they plan to. Once the FLFs are allowed to establish a presence in these jurisdictions directly, the need for a regional gateway may diminish. Second, the statistics showed that Singapore lawyers were keen to engage in international work and that a significant number of them would choose to work in FLFs in Singapore if the opportunity arose. Third, and related to the latter point, FLFs may be expected to "localise" over a period of time as Singaporeans gravitated towards FLFs based in Singapore; and as it became more cost-efficient to staff FLFs with Singaporeans rather than expatriates. Aside from this, it was also felt that if the FLFs could be incentivised to hub regional operations in Singapore, this would, over time, result in more Singapore-qualified lawyers having acquired experience with complex cross-border transactions and enhance the overall quality of services available to high-end commercial consumers.

THE AIMS OF LIBERALISATION

These concerns prompted the Committee's belief that some form of liberalisation was necessary. However, to recommend liberalisation, the Committee needed to be persuaded that it would achieve a number of key objectives.

First, any liberalisation must necessarily benefit Singapore's economy and enhance its position as the region's legal port-of-call. One way of doing this would be to grow the economic pie by attracting top-end, cutting-edge work to Singapore. It was expected that FLFs may be able to "import" transactions that SLFs might not otherwise attract. The aim of liberalisation should not be to cannibalise the domestic market by introducing new service-providers to a relatively small domestic market; but to encourage FLFs to bring in high-value work that SLFs are not presently engaged in.

Over the long-term, however, one of the key ingredients to being a regional hub and in sustaining that position is to "export" Singapore law and promote its use in international contracts between or involving regional parties. Recognising the intrinsic difficulty of displacing English or New York law as the governing law for banking documentation, it was nonetheless felt that in a variety of other areas of cross-border commercial activity, Singapore law – with its close affiliation with the English common law and without the influence of European law that has crept into English law – could offer a viable alternative as the governing law of the contract or transaction. Similarly so in relation to having Singapore stipulated as the seat of dispute resolution. This was one of the factors in the Committee's recommendation to allow FLFs to advise on Singapore law issues in defined areas.

Second, liberalisation should seek to encourage the SLFs to grow. Rather than take away business, SFLs should adopt the best practices of FLFs and themselves seek to regionalise. As the Committee noted in its report, a survey of Hong Kong's legal services sector in 2001 reported that international firms were leading changes in practice management and were having an

overall positive impact on the local law firms.

Third, liberalisation should benefit Singapore lawyers by increasing their choice of employers in Singapore. If Singaporean lawyers are able to satisfy their desire to engage in international work in an international firm in Singapore, it should reduce the drain of legal talent to other countries.

Therefore, liberalisation should, ideally, benefit Singapore in three critical aspects: its macro-economy, SLFs and Singaporean lawyers.

WHY THE STATUS QUO DOES NOT WORK

It was considered that the status quo does not work either for FLFs or for Singapore. From the perspective of the FLFs, the restrictions placed on their ability to advise clients can be frustrating. For instance, prior to the recommendations of the Committee being accepted, FLFs were permitted to act in international arbitrations governed by Singapore law only after the notice of arbitration was issued. As much of the work would already have been done by the time a formal notice is issued, this serves to act as a serious disincentive to the use of Singapore law in commercial contracts and to unduly restrict the involvement of the FLFs in this area of practice.

The inability of the FLFs to act in matters governed by Singapore law (except in limited areas and even then only when in a JLV) also means that FLFs have little economic ties to Singapore. Although Singapore can boast a geographical advantage, that advantage may be overtaken as key economic centres in Asia also liberalise. It should also be borne in mind that unlike Hong Kong, for example, Singapore does not have a major economic hinterland.

These restrictions have directly affected the decisions of FLFs to locate their businesses here. It is not surprising, for instance, that the Committee learnt that out of 22 international law firms active in arbitration in Asia, only four are in Singapore whilst all 22 are in Hong Kong.

Of greater concern over the longer-term, however, is that FLFs have absolutely no economic incentive to recommend the use of Singapore law in their international transactions or recommend Singapore as a dispute resolution venue since they would not be able to advise on such transactions or disputes. Indeed, under the status quo, FLFs are not even able to draft or vet Singapore law agreements incorporating arbitration (or any dispute resolution) clauses or advise on the legal rights and liabilities of the parties to such agreements before the dispute is referred to arbitration. In non-arbitration disputes, those restrictions continue even after proceedings have been commenced in the Singapore courts.

ENCHANCING JLVS

One of the suggestions considered by the Committee was to enhance the JLV scheme. Under the proposed JLV scheme, FLFs would be permitted to co-operate in

arbitration work (in addition to existing areas of co-operation). The proposed scheme would also allow for greater economic union between the constituent FLF and SLF by permitting the FLF to share in up to 49% of the profits of the SLF. But there would be restrictions. It was originally proposed that the SLFs that could participate in this scheme should be limited to the larger firms, and that the FLFs should be required to share their Singapore law profits. In addition, there would be restrictions on the ratio of Singapore lawyers to foreign lawyers and a further requirement that the Singapore lawyers have a minimum of three years' practise in an SLF.

The feedback on the proposed JLV scheme was not enthusiastic, and the almost uniform response was that the proposed scheme would not be much different from the present incarnation of the JLV scheme. Although promoting greater economic union was a step in the right direction (the lack of economic union was identified as the primary reason JLVs were not succeeding as originally intended), it was not likely that FLFs would ever accede to having to pay a "franchise fee" for being permitted to practise Singapore law. The limitation on the FLFs that could participate in what was supposed to be a beneficial activity was also criticised.

The Committee, in the end, decided to recommend the enhanced JLV scheme (although taking on board some of the changes suggested including allowing all FLFs the option of joining the scheme) on the basis that this would give greater flexibility and options for SLFs who wanted to form partnerships with FLFs.

However, the enhanced JLV scheme was not thought likely to significantly change the status quo. Moreover, the restrictions that would be placed on whom and how many Singapore lawyers FLFs could hire were not an attractive proposition to the FLFs that the Committee surveyed.

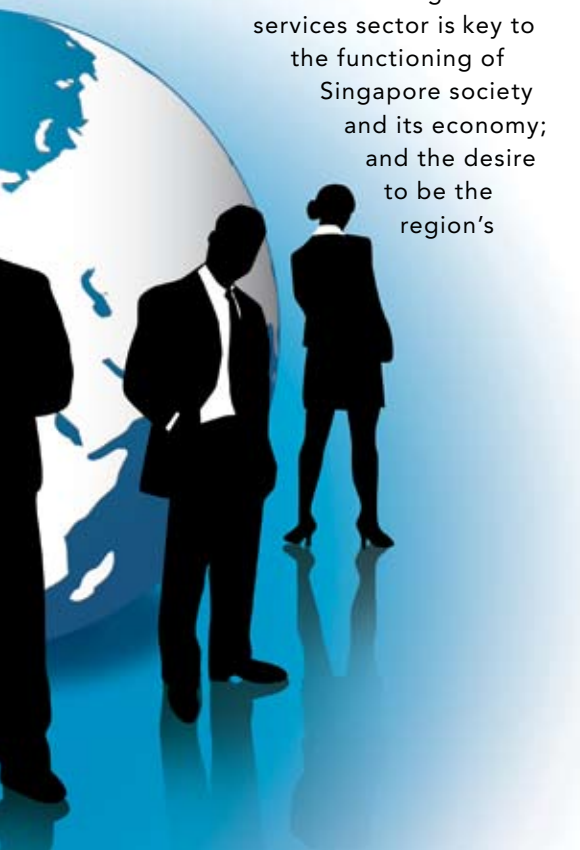
THE ROUTE TO LIBERALISATION

If neither the status quo nor the enhanced JLV scheme was sufficient, what else could be done to position Singapore as a legal hub?

The Committee was very well aware of, and seriously deliberated, the arguments against liberalisation. Chief among the concerns often expressed was that FLFs would cannibalise an already small domestic market. In addition, SLFs would be facing even greater

competition for the already limited pool of lawyers as FLFs would need to recruit Singapore-qualified lawyers to advise on Singapore law issues. Although Singapore lawyers are already migrating to FLFs here and abroad, the possibility of creating a local practice with a firm of international branding may be an even more appealing proposition.

These concerns were genuine and the Committee was anxious to ensure that its recommendations should not result in any long-term or permanent damage to the SLFs and their lawyers. The survival of the domestic legal services sector is key to the functioning of Singapore society and its economy; and the desire to be the region's legal hub should not be at the expense of Singapore law firms and lawyers.



It was thought, however, that the path to establishing Singapore's presence on the global legal map might not be one that would sacrifice the interests of the domestic legal community. In charting the route to liberalisation, the Committee was committed to two fundamental principles. First, any liberalisation must be to Singapore's overall advantage, its law firms and lawyers. Second, liberalisation would have to be measured and incremental.

Having conducted numerous surveys and discussions with all the relevant stakeholders, the Committee was eventually persuaded that the concerns raised would not be as great as initially thought. FLFs that the Committee spoke to were unequivocal in stating that they were not interested in general commercial or disputes work. Their main focus was and would continue to be high-end transactional and cross-border work that the vast majority of SLFs and local lawyers were not presently engaged in. To the extent that there may be some competition at the top-end of the market, the Committee was confident that the large SLFs that are involved in such work would be able to stand up to the competition. In fact, many are already responding positively by expanding and regionalising.

FLFs should thus be viewed as partners rather than competitors. One of the sub-committees under the purview of the Professional Affairs Committee of the Singapore Academy of Law ("SAL") has established the Foreign Counsel Chapter and it strives to bridge the gap between the local and foreign bars by encouraging FLFs to participate in the activities of the SAL and to share their expertise and experience through seminars and other avenues.

While the competition for legal talent would be keener, this would not necessarily be an undesirable consequence for two reasons. First, if Singapore

lawyers could be convinced that they could fulfil their desire to engage in international, cutting-edge work in a Singapore-based FLF, that might go some way in ameliorating the brain drain from Singapore. Second, if Singapore lawyers join FLFs, then, over time, FLFs will become "localised" so that the distinction between FLFs and SLFs may well become illusory. This, in fact, has been the experience of the accounting profession. Indeed, in Hong Kong, several foreign law firms have converted to become Hong Kong law firms. The Committee also believed that the problem of the shortage of lawyers was not to be addressed by limiting competition for such talent but by increasing the talent pool.

The Committee, however, accepted that liberalisation had to be done in a sensible and careful way. This meant two things. First, the Committee believed that liberalisation should affect only certain sectors of the legal services sector. Thus, similar to the JLV scheme where FLFs were permitted to practise Singapore law in specific areas, FLFs given the licence to advise on Singapore law would only be allowed to do so primarily in certain specialised aspects of commercial and corporate law. They would not, for instance, be able to practise in areas such as criminal, family and conveyancing work as well as court litigation. FLFs the Committee spoke to were not, in any event, interested in such work but the Committee thought it was useful to set categorical limits in order to prevent the cannibalisation of many SLFs whose bread-and-butter resides in those issues and in which FLFs had no conceivable competitive advantage.

Second, liberalisation should be carried out in incremental fashion. Thus, the number of FLFs issued licences to engage in Singapore law work would initially be limited. This would allow controlled "testing" to determine whether FLFs would bring the advantages that the Committee believed they would.

To achieve these aims, the Committee proposed that Requests for Proposals would be made. This would enable FLFs to set out a compelling case as to how they would benefit Singapore if they were allowed to practise Singapore law. They would have to provide details as to what type of work they want to engage in, how they would promote Singapore law and how they would seek to increase the nature and volume of deals transacted in Singapore. On the flip-side, the Government, too, would be keen to have FLFs commit to certain goals. This ensures the matching of expectations between the FLFs and the Government.

LOOKING FORWARD

FLFs the Committee have spoken to already report considerable buzz in the international legal community. But the recommendations of the Committee are necessarily in broad strokes and details have yet to be worked out. As consultations between the Ministry of Law and FLFs intensify, the Committee is confident that both sides will be able to plot a sustainable, progressive, meaningful and mutually beneficial path towards establishing Singapore as the region's hub for legal services. *IS*

HEART AND S(E)OUL INTO LIBERALISATION

FOLLOWING THE WORLD TRADE ORGANIZATION ACCORD, KOREA'S LEGAL MARKET HAS BEEN BRACING ITSELF FOR LIBERALISATION. HOON LEE OF SIGONG LAW PC TELLS OF THE LEGAL SECTOR'S CURRENT STATUS, THE DIFFICULTIES IT FACES AND WHERE IT IS HEADED.

IN a measure to partially liberalise the Korean legal services market, the Korean government recently introduced a bill, the Foreign Legal Consultants Act ("FLCA"), which is expected to be placed before the newly elected 18th National Assembly of Korea for its review and vote on the pending legislation. The FLCA is being pushed as part of the bilateral or multilateral free trade agreements Korea has executed or is currently negotiating, such as the Korea-US Free Trade Agreement (signed in June 2007), the Korea-EU Free Trade Agreement (under negotiation) and Doha Developmental Agenda. In this connection, the new law will apply only to lawyers from countries that have forged agreements with Korea to open their respective legal services markets.

If the FLCA is enacted, the most notable difference as compared to pre-FLCA days will be that certain qualified foreign lawyers may establish foreign legal consultant offices in Korea on their own. Specifically, under the draft legislation, foreign law firms that have been operating for more than five years can apply to set up branch offices in Korea, provided that only one branch office will be permitted per law firm, and that the head of the branch office shall have more than seven years of experience as an attorney. So, this

By **Hoon Lee, Senior Foreign Attorney**

means that large international law firms operating their Korean practices out of Hong Kong or Tokyo offices will be able to establish branch offices in Korea.

However, according to the draft legislation, foreign legal consultant ("FLC") offices will not be allowed to hire Korean lawyers or establish partnerships with Korean law firms, and will thus be limited to advising clients on the law of their home jurisdictions, public international law and international arbitrations. So, at least in the beginning, it is unlikely that Korean law firms will be facing much competition from foreign law firms who intend to establish local offices in Korea. Nevertheless, most large Korean law firms have been trying to increase their size in preparation for legal market liberalisation. For instance, the number of attorneys at Kim & Chang, the largest law firm in Korea, is approaching 400 attorneys, and there are also firms such as Bae, Kim & Lee and Lee & Ko where the number of attorneys are close to or already exceeds 200.

Another noteworthy aspect of the FLCA bill relates to the work experience qualification that is required in order for a foreign attorney to register as an FLC. That is, under the draft legislation, a foreign attorney intending to work in Korea as an FLC shall have worked at least three years in his or her home jurisdiction. The three-year home jurisdiction work experience requirement could negatively impact many foreign attorneys (mostly Korean nationals) who came straight to Korea after obtaining their respective foreign law licences to work in Korea as in-house lawyers or foreign attorneys at Korean law firms.

To help incoming foreign attorneys meet the three-year home jurisdiction work requirement, the Korean government plans to recognise their work experiences in Korea to offset the three years. However, the draft legislation seems unclear as to the treatment of

the foreign attorneys already working in Korea without the three-year home jurisdiction work experience. Thus, if such foreign attorneys were not allowed to continue to work in Korea without registering as FLCs, it could become a source of dispute or controversy as they may have no choice but to go back to the relevant home jurisdiction for the purpose of satisfying the three-year home jurisdiction work requirement or to find alternative employment in Korea.

Other features of the draft legislation include the requirement that foreign attorneys working as FLCs need to stay in Korea for more than 180 days per year so that the Korean government can impose taxes on their income. This may induce foreign law firms to hire local foreign attorneys who already meet the three-year work experience in their jurisdiction and who would be able to meet the 180-day residency requirement, instead of bringing in attorneys from outside of Korea. In addition, under the draft legislation, the foreign attorneys working in Korea as FLCs shall no longer be permitted to call themselves foreign attorney, such as "US Attorney" or "Australian Attorney", but shall only be referred to as "Foreign Legal Consultant" to avoid confusion with Korean attorneys.

In sum, the Korean government is hoping that by formally regulating activities of foreign attorneys under the FLCA, only foreign attorneys with sufficient qualifications will work in Korea and that only reputable foreign law firms will be able to establish branch offices within Korea. At the same time, it is expected that the FLCA will give Korean attorneys and Korean law firms additional time to prepare for liberalisation of the legal services market as the FLCA will not allow foreign law firms to hire Korean attorneys in the initial stage of liberalisation.

However, subsequent to the enactment of the FLCA, which is expected to occur in the later part of this year, the Korean government plans to further liberalise the legal services market in gradual stages as part of its agreement under the Korea-US Free Trade Agreement, *ie*, allowing foreign law firms to establish work relationships with Korean law firms in about two years' time, to be followed by allowing the formation of joint ventures between foreign and Korean firms, and eventually permitting foreign law firms to hire Korean attorneys.

It is interesting to note that the Korea-US Free Trade Agreement, which played a key role in prompting the Korean government to propose the FLCA, has not become effective as both countries have yet to ratify the trade agreement due to their respective political situations. In the US, Congress has been hesitant to approve the deal because it feels that the agreement does not do enough to pry open Korea's automobile market. In Korea, the approval of the National Assembly has been delayed because of presidential and parliamentary elections, that have just been completed, together with the recent demonstrations in Korea that took place over the Korean government's

recent decision to import US beef, free from most restrictions.

Assuming that the Korea-US Free Trade Agreement will soon be ratified and become effective as noted above, it is not yet clear how competitive Korean law firms will be *vis-à-vis* international law firms when the legal service market is fully liberalised. However, general consensus in Korea is that a few top Korean law firms will likely survive the global competition as they have been preparing for years for the liberalisation of the market by adding qualified attorneys and expanding international presence. However, as Korean companies are looking more and more to do business overseas, owing to saturation of the domestic market, it is anticipated that there will be sufficient demand for the services of international law firms with vast worldwide networks that will set up their own offices in Korea, and that such foreign law firms will gradually beat out the competition coming from Korean law firms.

Lastly, it is noted that the Korean government has recently passed the Law of Establishment and Operation of Law School to introduce US-style law school education in Korea, and has selected 25 universities that will commence a three-year law curriculum in March 2009. Currently, law is taught as an undergraduate major at universities. However, any student, regardless of university major, can take the national bar examination to become a lawyer. Nevertheless, the national bar examination is quite tough to pass and, for some 1,000 people who are fortunate to pass the exam each year, they are required to go through a two-year programme at the Judicial Research and Training Institute before being admitted as a lawyer or proceeding to become a public prosecutor or court judge.

With the introduction of the new system, however, where students will be required to have a law school degree to join the Bar, the Korean government is hoping that the adoption of such a system will train and produce law professionals that could effectively compete against foreign legal professionals when the legal services market is opened. However, there are also many voices raising concerns that the introduction of US-style law schools will not produce qualified lawyers as compared to the present system. Furthermore, for many universities that have not been granted permission to open a law school, they have been fiercely protesting, to the Government, the selection process and even plan to file legal action against the education ministry in an attempt to raise the number of law schools to be permitted.

So, amid the anticipated initial liberalisation of the legal services market that may come as soon as later this year, there appears to be a lot of confusion and also controversy about the possible effects of the FLCA and law school reform. What seems certain, however, is that people in Korea are accepting the fact that the legal services market liberalisation is an inevitable aspect of Korea being integrated into and opening up to the world and that they also have to be ready for global challenges in other markets. *IS*

OPPORTUNITIES AND CHALLENGES

VIETNAMESE LAWYERS IN THE INTERNATIONAL ECONOMIC INTEGRATION

KATHY BUI, KHATTARWONG VIETNAM, LOOKS AT THE CHALLENGES AND OPPORTUNITIES THAT LIBERALISATION HAS BROUGHT TO VIETNAMESE LAWYERS.

VIETNAM'S official accession to international economic organisations, such as the Association of South-East Asian Nations ("ASEAN"), the Asia-Pacific Economic Cooperation ("APEC") and the World Trade Organization ("WTO") has demonstrated important steps forward of the nation's integration into the international community. According to Vietnam's WTO Specific Commitments in Services, legal services are recognised as professional services and foreign law firms are permitted to establish a commercial presence in Vietnam in certain forms. The appearance in Vietnam of foreign investors in general and foreign lawyers in particular, as a result of opening up the domestic market to competition from foreign investors, does not only create development opportunities for local lawyers but also impose significant demands for their reform to achieve the competitive ability in international trade.

Statistically,[1] foreign investment in Vietnam, commonly under the form of either wholly foreign-owned enterprises or joint

1 Thùy Trang, "FDI thời WTO" <http://vneconomy.vn/?home=detail&page=category&cat_name=1017&id=028a68846513ec> (accessed 4 June 2008).

By **Thi Phuong Hien Bui (Kathy), Legal Practitioner**

venture limited liability companies, had rapidly increased in 2006 and was even more promising in 2007 with a sharp increase from US$10.2bn in 2006 to US$20.3bn in 2007. As stated in a previous economic forecast made by the Department of Foreign Investment – Ministry of Planning and Investment in Vietnam, there were more than 1,400 newly-approved foreign direct investment projects with a total registered investment capital of approximately US$18bn in the first five months of 2007. Furthermore, there have been about 380 current investment projects which applied for capital increase with the total additional capital of US$2.4bn. In addition, more than 110 multinational corporations ("MNCs") included in the Fortune 500 List have invested in Vietnam with a total registered capital of US$11.09bn. Moreover, according to one of Grant Thornton's surveys, 87% of the foreign investors in Vietnam strongly believe that Vietnam's economy will continue to rapidly develop in 2008.

Foreign investors often look for law firms which have originated from their own jurisdictions, and not locally, for legal consultation as soon as they start doing business in Vietnam. One of the many benefits domestic lawyers may achieve from assisting foreign investors and co-operating with, as well as working under the instruction of, foreign lawyers in large scale business transactions is the improvement of their foreign language skills, information technology skills, negotiation skills, professional performance, and knowledge in international business and, especially, international laws. It is unarguable that the chance for Vietnamese lawyers to learn those skills from foreign partners and clients as well as international colleagues has never been as promising as it is now because local lawyers did not have many opportunities to perform professional tasks and co-operate with foreign lawyers in previous decades.

The practise of law was recognised as a profession in Vietnam for the first time in 1987. The number of law offices then was only a handful. Subsequently, the passing of the Law on Enterprises 2000 (with its encouraging clauses on new foreign investment) and the Ordinance on Lawyer 2001 created more opportunities for local lawyers to develop. Law as a profession nowadays has continued to progress in tandem with the rapid development of the domestic economy following the country's WTO accession. In addition, the Law on Lawyer 2006 has further enhanced

the recognition of the profession as well as the role of lawyers. Under the Law on Lawyer, in particular, law organisations, such as law firms and offices, are seen as enterprises and accordingly, lawyers are recognised to be traders whose main products are legal services. Besides these law organisations, there is another group providing legal services – independently performing lawyers. These lawyers are not required to establish offices nor pay Corporation Income Tax but only hold professional licences/certificates. While there were only approximately 700 law organisations, excluding independently performing lawyers, in 2005, the total number of law organisations in Vietnam had increased to 1,200 more than a year later.[2] In fact, foreign enterprises currently cannot directly request foreign lawyers to participate in commercial transactions in Vietnam, as under the Law on Lawyer, foreign lawyers are generally not yet allowed to advise on Vietnamese law except where the consulting lawyers have graduated from a Vietnamese law college and satisfy similar conditions applicable to Vietnamese law practitioners. Hence, foreign law firms seek local lawyers, including those highly-skilled and/or are junior either for their urgent professional performance in Vietnam and/or professional training and development with a long-term view. Professional training provided to local lawyers, in particular, can be conducted via short-term training courses in overseas offices of the foreign employers or in the law firms' offices in Vietnam. Furthermore, recognising the need to improve local lawyers' professional skills and international law knowledge, the Bar Associations in Hanoi and Ho Chi Minh City have organised a number of co-operation programmes which would be in the form of formal talks or presentations in order to enhance the professional capabilities of domestic lawyers.

On the other hand, there are arguments in favour of more challenges for local lawyers in the era of international integration. The most common challenge is the limited competitive ability of domestic lawyers. Indeed, this competition is more challenging for medium and small local law firms as it is highly likely that even domestic investors involved in large investment projects will consult large local law firms and foreign law firms instead of medium and small local firms.

It is generally recognised that the rights of an investor is dependant on the skills of the lawyer consulted. Whether or not a business transaction is of "great benefit" or a "dead loss" to an investor is largely determined by the contents of relating documents which are drafted by that lawyer. Moreover, international transactions are seen as more diversified and complicated, and must adhere to international standards. Thus, the role of foreign lawyers will be more important in assisting those transactions to meet international standards. Also, more diversified and complicated international transactions may result in more

2 Thành Đạt, "Speeding Up Legal Services" <http://saga.vn/Publics/PrintView.aspx?id=5190> (accessed 4 June 2008).

international commercial disputes which require negotiation and litigation. Legal services provided to investors in these respects therefore require domestic lawyers to be highly professional and responsible.

However, local lawyers are often seen to be deficient in international standards of knowledge of law, professional skills, including presentation skills, and foreign language skills which significantly affect their ability to negotiate and litigate. The four to five year, lecture-centred legal education course in the university is no longer suitable and sufficient to provide law students with practical experience and knowledge. In addition, although the Institute of Justice organises professional training programmes for lawyers by which law practitioners are officially certified as lawyers after a six-month intensive course and an 18-month internship, during the 18 months of practice, they are not allowed to give direct consultation to clients. Personally, I find this contradictory to the original meaning of the term "practice". Unfortunately, this is unlikely to be significantly changed in the coming years although the matter has been controversial and formally discussed many times by policy-makers, educational specialists as well as experienced lawyers. Vietnamese lawyers are still unfamiliar with international working methods and not confident of their ability to work in foreign jurisdictions. According to Weston in his recent investigation, statistically, there are only 50 out of more than 3,900 Vietnamese lawyers who understand international law enough to efficiently assist local businesses in commercial transactions[3] and only less than 15 of these meet international standards.

To sum up, the appearance of foreign investors and lawyers in Vietnam, as a result of liberalisation, creates chances for domestic lawyers to learn and achieve international professional standards but also creates difficulties for them in the more challenging international environment. This is the reason why local Vietnamese lawyers are both excited and worried at the same time. Personally, I think being over-worried or over-excited is time consuming. Conversely, time should be spent on finding ways to overcome the challenges and utilise the opportunities. A promising career and bright future are within reach of lawyers who are well prepared and train themselves; but may be out of grasp for those who have yet to see opportunities within challenges.

Foreign lawyers may, in the future, be allowed to advise on Vietnamese law in Vietnam. The domestic legal services market share for local lawyers may then become smaller. Hence, what is most important now for local lawyers is to gain necessary knowledge and skills as soon as possible in order to confidently assist local and foreign investors in this international economic integration. *IS*

3 Mike Weston, "WTO Membership Illuminates Weakness of Local Lawyers" (9 August 2006) <http://chao-vietnam.blogspot.com/2006/08/wto-membership-illuminates-weakness-of.html#115512657854959606> (accessed 21 May 2008).

SINGAPORE LAW FIRMS ON LIBERALISATION PLANS

INTER SE GETS THE REACTIONS OF FOUR LOCAL LAW FIRMS ON THEIR RELATIONSHIP WITH FOREIGN LAW FIRMS, THE EFFECTS THAT LIBERALISATION OF THE LOCAL LEGAL SERVICES SECTOR WILL HAVE ON THEIR PRACTICES AND WHAT THEY FEEL SHOULD BE DONE TO AMELIORATE ANY IMMEDIATE NEGATIVE CONSEQUENCES SOME OF THE LIBERALISATION MEASURES MAY HAVE ON LOCAL LAW FIRMS.

In the polemic[1], the foreign law firm ("FLF") is either demonised or deified. What are some of the tensions and synergies that Singapore law firms ("SLFs") have with FLFs?

Drew & Napier LLC: No matter what the area of endeavour, the opening of doors poses a threat to the incumbents. This is not unique to the legal market in Singapore. Why should someone who has worked so hard to build market share be content with a smaller stake, not because of his own shortcomings but simply because the rules are changed to let others into the game? That argument is not about to go away any time soon. There may be a few synergies between SLFs and FLFs (why else are some JLVs surviving?), but we should recognise that at the end of the day, law firms are by nature fiercely competitive.

However, what you describe as "the polemic" masks the real issue, which is what is in Singapore's interests? That is a question for the policy-makers who look at the issue through a different set of lenses. Their objective is simple: to make Singapore more investor friendly than our competitors. We are equal to the best in a few areas. But, like justice,

1 *Report of the Committee to Develop the Singapore Legal Sector (Final Report)* (September 2007) (Chairman: Justice V K Rajah) ("*The Report*").

perceptions are as important as the reality. If an American, a European, a Russian, an Arab, a Chinese or an Indian investor believes that Goldman Sachs can give him better service, then we must have Goldman Sachs. Goldman Sachs in turn connects us with the rest of the world. If the blue chip investment banks think that law firms in New York or from the Magic Circle are better, and if that is what it takes for Singapore to stay in the game, then that is the way we have to go.

Rajah & Tann LLP: The FLFs should neither be demonised nor deified. In some areas – high-end finance and transactional work, best practices – there is much we can learn from them. Our own experience has been that by working with international lawyers in selected areas, we have been able to extend our reach both in terms of geography and types of work. On the other hand, at a time when there is a severe labour shortage, we are inevitably competing with them for the same talent pool. This is our greatest challenge. While we have the advantage of a strong position in our home market, they have the lure of international branding and higher wages for younger lawyers.

***The Report* seems to suggest that a "spirit of healthy competition" approach between SLFs and FLFs might work better instead of an over-protective attitude. For a start, it has been suggested that licences to practise local law be granted to a handful of FLFs. What impact do you see this as having on SLFs? Would the granting of licences make FLFs even more attractive to local lawyers and law graduates, thus putting SLFs at a disadvantage? Would the competition up the quality of service in SLFs, as *The Report* seems to suggest? Are there other effective measures which the Government could consider?**

D&N: The most immediate effect will be competition for lawyers. Once a talented lawyer can practise Singapore law in an FLF, where his salary will be substantially more, and yet have the option of not leaving Singapore, he will find the move from SLF to FLF even more attractive. SLFs in the same space will have to improve their services, but the process will not be painless. There will have to be some serious restructuring. If SLFs are unable to compete on wages and glamorous postings, then they will have to specialise in select areas, find innovative ways to keep lawyers, learn best practices from returning lawyers who have worked with FLFs, give lawyers systematic and structured training and a future which may not be readily available in FLFs, and replenish from other sources like Malaysia, India and China. That process has started and will gain momentum when the doors are opened.

While a few SLFs will go through a difficult process of adjustment, the beneficiaries are our young lawyers and law students. They will have more opportunities. And why not? It is right that they should have better opportunities than we had when we started practice.

The best lawyers in the region will come to work in the FLFs in Singapore. These FLFs will target the major complex deals and will, by dint of their reputation, have a better chance at getting regional work

into Singapore. That cannot be bad for Singapore.

Yet, there is one area which concerns me: the quality of the Bar and in the long term, of the Bench. It is already difficult to get the brightest young lawyers to be advocates. Litigation is very stressful and, while most times rewarding, can be extremely punishing. If most of our best graduates go to the FLFs, the Bar will suffer. The Bench is nourished largely by the Bar. We have one of the best judiciaries in the world. But if we weaken our Bar, we will ultimately weaken our Bench. It might help that a number of our lawyers will do arbitration in the FLFs. We need to find innovative ways to retain a fair proportion of the best in SLFs, doing litigation.

Rodyk & Davidson LLP: Certainly, the granting of licences to FLFs to practise local law would open up more employment options to local lawyers. Each successive group of law graduates enjoys opportunities their predecessors never had. It does make the shortage of local lawyers more acute. However, we cannot hold talent back by simply maintaining artificial barriers of entry to the competition. We have to step up the supply of new lawyers. We have to become more competitive in attracting and retaining talent. Perhaps one thing the Government could do is to channel resources into training and equipping good foreign legal talent (especially from the regional markets, like China and India) so that they can practise Singapore law, in the Singapore environment.

As for the clients, yes, the competition is likely to up the quality of the SLF services. But why do FLFs enjoy a competitive edge? For one thing, they invest a lot in their people and the in-house resources to support higher service levels. For another, FLFs have more experience in the big-ticket deals. This, in turn, puts them in a better position to successfully pitch for and win more such deals.

To be fair, though, SLFs have not remained static. Many SLFs have been investing in resources to upgrade service levels. These include sophisticated IT management and support systems, in-house training, knowledge management, communications skills, and so on. If more is needed to deepen SLF skills and service quality, then so be it. SLFs need to take a longer term view and invest in such resources. As for bagging the big-ticket cases, past experience is only one of many factors (albeit an important one). Already, there are SLFs who are able to compete effectively with the FLFs. SLFs have deeper local and possibly regional knowledge. Our fees tend to be more competitive. In fact, local clients may begin to realise what good value SLFs are once they start comparing them to FLFs! We may see an averaging out of fees, with FLFs accommodating the lower local fee benchmarks and SLFs pushing those benchmarks higher. To some degree, SLFs probably suffer the all too common syndrome of local brands being underappreciated within their own countries. Local brands tend to be perceived as being inferior to foreign brands, whether

justified or not. In contrast, for example, in Indonesia, Singapore law firms are perceived as being on par with the international law firms.

Government measures by way of tax benefits, training funds, *etc*, will help. But such measures are, ultimately, an artificial prop. Such measures may provide temporary relief, but the long-term realities require SLFs to survive and flourish on their own.

Stamford Law Corporation: Stamford Law supports a full liberalisation of the Singapore legal market including litigation, for the following reasons:

(a) clients in the high-end corporate, banking and litigation markets in Singapore should be entitled to receive the best available representation. In this regard, if SLFs in this space cannot compete with FLFs in terms of service, fees and expertise, then they do not belong in the market. SLFs have considerable domestic advantage, including lower cost structures, existing branding in Singapore and the region, stable equity structures and client loyalty. These can all be used to develop successful practices regardless of the presence of FLFs. We do not see any reason why litigation should remain a protected sector and believe that opening litigation up to FLFs will lead to the same competitive benefits for consumers of legal services as in corporate law;

(b) there are significantly different cost structures between SLFs and FLFs which means that a great deal of the legal work undertaken in Singapore is insufficiently lucrative to interest or support FLFs. Such work includes conveyancing, domestic litigation, family law, basic commercial and corporate law, domestic insolvency law and criminal law. Small practices would not, in our opinion, be affected by a liberalisation of the legal market; and

(c) we believe that open competition will strengthen the legal sector in Singapore and that the firms which compete and survive will be those who develop quality legal services rather than those with names and/or reputations which are not backed by quality deliverables. This applies as much to FLFs as to SLFs and it is much harder for FLFs, without real presence in Singapore, to serve a Singapore-based clientele than it is for SLFs.

Given our views on the proposed liberalisation, it follows that we see the current proposals as falling short of what is required in the circumstances. We see little point in continuing with the current joint venture structure as this structure has, by and large, failed to deliver the benefits that were intended. The proposal to allow five FLFs to practise Singapore law appears to be another interim step towards full liberalisation and we do not expect it to have significant impact on the current legal market. The most likely candidates to have an impact on the Singapore market are those FLFs already present. However, a number of these FLFs have existing joint

venture commitments and therefore there is a limited pool of FLFs in Singapore that can take up the licence. As for new FLF's entering Singapore, it remains the case, in our view, that the key driver for any FLF is its ability to succeed in the regional market rather than Singapore. Therefore, good regional prospects will be more significant in determining the presence of an FLF in Singapore than the ability to hire Singapore lawyers and practise Singapore law, which merely goes to the cost structure of the FLF and will no doubt impact the cost structure for SLFs.

We also do not see the granting of five licences to FLFs as likely to significantly exacerbate the existing shortage of mid-range associates in Singapore. The shortage of lawyers experienced at the moment is a necessary consequence of a long-term restrictive domestic supply policy, the perceived quality of Singaporean-qualified and trained associates and a regional economic upswing. We do not doubt that Singapore-qualified lawyers will continue to be attracted to join the FLFs due to higher remuneration packages and overseas postings as is already the case. The challenge is to provide a system whereby alternative sources of legally trained associates, including those from other Commonwealth and ASEAN jurisdictions, can qualify as Singapore lawyers or registered foreign professionals as the case may be in a timely fashion.

We favour liberalising the domestic supply policy which has been traditionally conservative and restrictive. To achieve this, the list of recognised Commonwealth universities should be liberalised and the intakes of the law faculties at the National University of Singapore and Singapore Management University increased. It makes no sense to us to allow for a larger number of foreign lawyers into SLFs through the qualified foreign lawyer scheme, yet deny many academically sound Singaporeans the right to study and practise law. We also no longer see any benefit in making Singaporean graduates from recognised Commonwealth universities undertake the Diploma in Singapore Law when much of Singapore law originates either from the common law or from Commonwealth jurisdictions.

> "Regionalisation is sexy but not easy."
>
> **– Drew & Napier LLC**

The rationale behind allowing FLFs to practise local law is that it will incentivise such firms to promote the use of Singapore law in their commercial dealings and to the multinational companies ("MNCs") they often represent. What is your take on this approach – are there nuances to the relationship between the FLF, MNC and local law that might need to be looked at more closely or is it really as simple as it is made out to be?

Rodyk: Perhaps, instead of just relying on FLFs or MNCs to do the job, it is the Singapore government-linked companies

("GLCs") and sovereign wealth funds ("SWFs") who should flex their negotiation muscle and promote the use of Singapore law. However, it is precisely in situations involving a GLC or an SWF that the other party is likely to resist the use of Singapore law. This is due to the perception (rightly or wrongly) that Singapore GLCs and SWFs would have an advantage over other parties within the Singapore system. A more likely scenario for the successful promotion of Singapore law is dealings between two non-Singapore entities in the region. For example, a case where an MNC is negotiating a deal with a large domestic party from, say, Indonesia. The former may prefer UK or US law. The latter may insist on Indonesian law. Here, Singapore law would likely be an acceptable compromise to both parties. Do we need to give FLFs access to Singapore law for them to encourage the use of Singapore law in such cases? There is probably some truth to the notion that FLFs would be less likely to obstruct the use of Singapore law if they themselves had access to Singapore practice. The element of self-interest, if any, against use of Singapore law because of a restricted practice would be removed.

Stamford: We do not consider the viewpoint that market liberalisation will assist in the promotion of Singapore law as being soundly

> To be fair, though, SLFs have not remained static. Many SLFs have been investing in resources to upgrade service levels.
>
> **– Rodyk & Davidson LLP**

based. Choice of law is dependent on many factors, including interpretation issues, enforcement issues and dispute resolution considerations. In many cases involving regional transactions, a compromise choice will be made which will not be the law of any of the parties to the transaction. We doubt that any general proposition that connects the ability to practise Singapore law and the choice of Singapore law is empirically verifiable.

***The Report* seems to suggest that with an increase in in-house legal departments in MNCs will come a proportionate increase in the amount of work for SLFs. What percentage of your firm's clients are in-house counsel? Is there a real and substantial benefit to be gained by SLFs from a rise in in-house legal departments?**

R&T: The real point is that as MNCs hub their regional in-house resources in Singapore, there will be a greater opportunity for law firms to service the needs of these in-house departments for the wider region. How successful this will ultimately be will depend on whether SLFs show that they are able to deliver high quality services. If they cannot, then the FLFs will be the primary beneficiary of this development.

The success of this push and pull approach to liberalisation is premised on our local markets being opened up to foreign firms even as our local firms are making headway in foreign markets. Are SLFs apprehensive about their prospects

overseas? Can SLFs establish a niche in such overseas markets as effectively and as quickly as FLFs may be able to do so in Singapore? What are the potential benefits and detriments? How may we exploit the one and mitigate the other?

D&N: There is already an impetus for SLFs to look outside of Singapore for growth. The legal market here is highly competitive and fast reaching saturation point. This leaves SLFs little choice but to look outside Singapore for growth.

Regionalisation is sexy but not easy. SLFs are constantly in a dilemma. Because of their relatively small sizes, resources are limited. To make inroads into foreign markets, SLFs need to have as their point person someone who has great marketing and legal skills. But having him or her venture out translates into a huge opportunity cost at home.

Also, establishing successful operations outside of Singapore requires financial muscle. SLFs simply do not have the same level of resources as FLFs. Nor can many take very long-term views. Furthermore, SLFs do not have the advantage of having their reputations precede them.

Another reason FLFs have been able to grow outside their home markets is their close relationships with their major clients. These clients, many of whom are MNCs, see these FLFs as indispensable advisers as they go overseas. Even when that is not the case, FLFs branch out to retain relationships with these MNC clients, giving them support wherever and whenever it is needed. The losses incurred in such overseas offices are more than compensated for by the goodwill and work generated at home.

We do not have the same numbers of Singaporean businessmen venturing abroad who need SLFs to be by their side. Things are changing, but the scale and numbers will have to pick up dramatically before SLFs can be realistically compared with FLFs.

Rodyk: The difficulty is that other regional jurisdictions remain restrictive. In that sense, FLFs and SLFs face similar obstacles in trying to grow their practices within a closed foreign market. FLFs, however, have the advantage of accompanying their large MNC clients into those markets. Together, they are able to flex their negotiation muscle to require UK or US laws in their dealings. That creates work for FLFs and increases their relevance and involvement in such projects because their expertise in UK and US laws are needed. It creates an inflow of work into their home jurisdictions, and makes their expertise more relevant in the foreign jurisdictions. So, it is easier for them to create a niche for themselves in the foreign markets.

That is the strategy we are pursuing for ourselves. Maintaining a monopoly of our market has served us only so far. Now, the objective is to become a legal services hub. By opening up our market to FLFs, we are hoping that FLFs and MNCs will help us grow our market as a legal services hub in this region. We are hopefully giving them greater incentive to propose, or at least not oppose, Singapore law as the choice of law. This we hope, in the long term, will create an

> “Tax breaks for regional work would be welcome. So too would grants for training. But in the final analysis, [the perceived lost monopoly] is not something the Government has any need to compensate.”
>
> **– Rajah & Tann LLP**

inflow of work into Singapore, as well enable us to create a niche in the overseas regional markets for SLFs.

In the longer term, this would make Singapore more attractive to FLFs to situate their regional offices here. Down the road, in the same way we have local accountants heading the regional practices of the international accounting firms, we may well have local lawyers heading the regional offices of FLFs.

Now really is the time to be heard, and the Committee has asked for “wish lists” from SLFs in terms of incentives and other assistance to help your firm expand regionally and to compensate for potential losses in the opening up of the local legal market. Is the Government in a position to provide greater assistance? What is foremost in your mind? What would be the best compensation for the perceived lost monopoly gained from a closed market?

R&T: Tax breaks for regional work would be welcome. So too would grants for training. But in the final analysis, this is not something the Government has any need to compensate.

Stamford: In our view, any calls by SLFs for compensation for market loss ought to be rejected out of hand. The policy behind the opening of the market is to allow enhanced competition to spur law firms to greater efficiencies and higher levels of service. This in turn ought to lead to greater financial gain for those SLFs that can compete. As stated above, liberalisation will only impact upon the high-end Singapore legal market. We are not aware that this sector of the Singapore legal market has been under-compensated historically in its earnings. Accordingly,

> “SLFs know of the risks and costs of venturing abroad and we are firmly of the view that it is not the role of taxpayers to provide the legal profession with income support.”
>
> **– Stamford Law Corporation**

we are not aware of any basis on which financial assistance should be sought or provided to those firms in the high-end market as this would amount to paying income support to a select group which, in many cases, has already benefited through the joint venture structure.

In terms of financial assistance for regional expansion, we consider that the levels of assistance provided at the moment are sufficient. SLFs know of the risks and costs of venturing abroad and we are firmly of the view that it is not the role of taxpayers to provide the legal profession with income support. The legal sector should be subject to market forces and the financial implications of poor decisions should remain the responsibility of those that made them.

Finally, as indicated above, we consider that there is an urgent need to restructure the integration of new graduates into legal practice. Under the current structure, new graduates from local universities complete a six-month pupillage and a six-month PLC (Practical Law Course), while graduates from recognised universities complete a one-year Diploma in Singapore law in addition to the six-month pupillage and six-month PLC. We do not support the retention of the Diploma in Singapore Law as a stand-alone academic course for the reason stated earlier. We also consider that the existing six-month PLC is too long and the course content no longer reflects the realities of legal practice in Singapore for a large number of attendees, and certainly in relation to those intending to practise corporate law or banking.

We propose that Singapore adopts a two-year articleship similar to the trainee solicitor concept in the UK. Included in this two-year period will be a shorter PLC of three months or so focused on practical skills such as drafting and advocacy. All substantive and procedural law subjects should be removed from the PLC as these are better “learnt by doing” as a trainee solicitor. Any formal courses on subjects, such as professional responsibility or solicitors’ accounts, can be provided as separate modules nearer to the time of call. *IS*

Inter Se thanks Mr Davinder Singh SC, Drew & Napier LLC; Mr Steven Chong SC, Rajah & Tan LLP; Mr Herman Jeremiah, Rodyk & Davidson LLP; and Ms Lee Suet Fern, Stamford Law Corporation, for their time in granting us this interview.

FOREIGN LAW FIRMS ON LIBERALISATION PLANS

TO FOLLOW-UP ON THE VIEWS ON LIBERALISATION FROM INSIDE OUT SHARED WITH US BY SINGAPORE LAW FIRMS, *INTER SE* FEATURES HIGHLIGHTS OF INTERVIEWS CONDUCTED BY NATHANIEL KHNG (JUSTICES' LAW CLERK, SUPREME COURT) WITH REPRESENTATIVES FROM THREE FOREIGN LAW FIRMS WITH OFFICES IN SINGAPORE FOR THEIR VIEWS FROM THE OUTSIDE LOOKING IN ON THE LIBERALISATION MEASURES PROPOSED.

Other than Singapore's stable legal, political and social infrastructure, what else is presently attractive about Singapore to foreign law firms ("FLFs")?

White & Case LLP:
Singapore has a strategic geographic location for transactions in Asia, particularly South-East Asia and India. Many of the financial institutions who are interested in these markets – and with whom we work in these markets – base their teams in Singapore. Finally, it is easy to recruit lawyers to live in Singapore, as it has probably the highest quality of life in the region.

***The Report*[1] proposes an enhanced joint law venture ("JLV") scheme, involving, *inter alia*, allowing FLFs to hire one Singapore-qualified lawyer with more than three years' experience per foreign lawyer to advise on Singapore law; allowing partners from Singapore law firms ("SLFs") to hold partnership and administrative positions in FLFs, and allowing FLFs to share up to 49% of the profits of the constituent SLF in permitted areas of co-operation. Do you have any views on whether this will assist in attracting more FLFs to start up a practice in Singapore?**

Allens Arthur Robinson: We welcome the proposed enhancements to the JLV scheme, all of which are incremental changes to the existing system that we will find beneficial. It is essential that the enhanced JLV structure is introduced at the same time as the QFLF (Qualifying Foreign Law Firm) Scheme, as proposed. Otherwise there is a risk that the JLV would become a less attractive scheme than the QFLF, which: (a) would be unfair to those firms that have already established a JLV; and (b) might lead to existing JLVs being wound back or dismantled. We doubt that the changes to the scheme are sufficiently major that they would, of themselves, entice FLFs to come to Singapore if they were not already inclined to do so.

***The Report*, in addition, proposes the issuing of up to five licences to FLFs to practise Singapore law. However, the FLFs who apply must demonstrate a concrete commitment to Singapore by pledging to keep their Singapore office at a certain size and composition for an agreed number of years and by agreeing to make Singapore their regional hub by vouching that certain countries in the region will be serviced by their Singapore offices. Only those firms which have made out a case for mutual benefit will be allowed to practise Singapore law through Singapore-qualified lawyers. For example, the presence of these firms in Singapore must help to increase offshore work from other Asian economies, increase legal expertise and transactional skills of Singapore lawyers, and promote the use of Singapore law. Do you have any views on whether this scheme will assist in attracting more FLFs to start up a practice in Singapore? Will the proposed requirements and conditions be too difficult to meet? Should more licences be given out?**

Allens: The proposal to issue licences subject to initial requirements and conditions, and for a limited number of applicants only, seems appropriate. It allows Singapore to introduce any

1 *Report of the Committee to Develop the Singapore Legal Sector (Final Report)* (September 2007) (Chairman: Justice V K Rajah) ("*The Report*").

liberalisation on a progressive basis, and to verify the effectiveness of the scheme for an initial batch of firms before deciding whether to open it up more generally. Given that there are currently only six JLVs, an initial batch of five QFLFs seems a sensible number.

***The Report* suggests that the scope of international arbitration work available to FLFs should be widened, would this be a major incentive for FLFs to set up practice in Singapore? Should the scope be further widened? If so, why?**

W&C: This would certainly be of interest to firms that have successful international arbitration practices and strong business in the region. For example, arbitration in Singapore is often the preferred dispute resolution mechanism for transactions involving India. Allowing FLFs to practise in this area may help Singapore become a more important legal centre for India-related business.

***The Report* recommended that litigation should not be open to FLFs. Should this area be liberalised to increase the attractiveness of Singapore as a place for FLFs to set up a practice?**

Allens: We would welcome liberalisation of this area if Singapore were to decide to do so, and would be interested in practising in commercial litigation with cross-border elements, as we do in Hong Kong. We expect other FLFs would have the same view and, as such, the attractiveness of Singapore as a base for FLFs would be increased. We would not, however, have any interest in pursuing purely domestic or personal litigation; nor would we expect that we (or other international firms) would have any particular success in competing against the SLFs if we attempted to do so.

Why did your firm start a practice in Singapore?

Duane Morris Singapore LLP: Now this is a very difficult question to answer. Because it is charged with my own personal feelings towards Singapore and how to sell to my partners that this is a place to start a practice.

Let me tell you. First why? Because we saw future. Because we saw possibilities of growth. Because Singapore in our opinion was able to provide an Asian presence, not only a South-East Asian presence but an Asian presence. The firm debated for a long time, first of all, whether we needed an Asian practice and there were some of us in the firm who said, "See how the world is going". But many US firms did not have an Asian practice, and these were firms which were

not with the times. So I had experienced Singapore, I wanted to come back, I believed in Singapore. I had some good connections and a rapport in Singapore. Basically, I took it upon myself to showcase Singapore to my partners so that it was not that difficult to make it. Singapore as you know first of all is well located. Singapore is progressive. Singapore appreciates and allows the setting up of a practice by FLFs. And within the constraints set out, we are able to recruit talent and mine talent to assist in some cross-border work.

W&C: As with all the other locations in our global network of offices, the primary driver for us locating a practice in Singapore was client demand. Our client base is dominated by international financial institutions and corporations and one of the key elements of ensuring we deliver the services they require is to make sure that we are in the locations where they need us.

What does your firm look for in making a decision to start a practice in another jurisdiction?

Allens: Allens Arthur Robinson considers a number of factors when deciding whether to start a practice in a particular jurisdiction, including:

(a) Client demand. Do our existing and potential clients want to use our services in that jurisdiction? This is considered the most important factor.

(b) Ease of doing business, including ease of obtaining

necessary licensing and work permits, access to a suitable labour pool at reasonable rates, availability of business and personal accommodation at reasonable rent.

(c) Reasonable tax system.

(d) Ability to operate under our own brand name.

W&C: The primary point we examine is client and market demand. If we believe we will better serve the clients and the markets in which we operate by being in a certain jurisdiction then we will consider starting a process there. Following that, we then look at more specific issues such as the regulatory environment, costs of doing business and the availability of high quality lawyers.

In your experiences, has it been easier to set up a practice in other jurisdictions?

Allens: We have found Hong Kong a straightforward jurisdiction in which to set up. I should mention that Australia has the most liberal regime in the region.

W&C: Singapore's policy is toward the liberal end of the spectrum between jurisdictions that impose no constraints at all on the entry of FLFs and those that do not allow FLFs to enter.

How has practising in Singapore been so far?

Duane Morris: Personally it has been very rewarding. I like to be here. The opening of the office here was very important to me. Coming back was very important to me. The reception that we have had so far has been very rewarding. Challenging because, in the best of circumstances, the practise of law is very challenging, competition is brutal. Recruiting and putting together a good team of lawyers, that has been very challenging. We have not completed that task. We want to grow, but we want to grow with people who are committed to Singapore and people who have been in practice in Singapore and have been in Singapore for quite some time. So in general, it's been

great but that does not mean that one does not face challenges still.

W&C: White & Case established its office in 1983 and this year marks our 25th anniversary.

Today, White & Case has a formal law alliance with Venture Law LLC, a full-service corporate law firm practising Singapore law. This relationship is one of the most successful of its kind in Singapore and has seen us act on many high profile transactions featuring White & Case as international counsel and Venture Law as Singapore counsel.

This past year was a very successful year for White & Case in Singapore. In addition to being the only US law firm to be ranked in the top tier for banking and finance transactions in Singapore by *IFLR1000*, the US Embassy in Singapore also presented White & Case with the "Corporate Citizenship Award" in recognition of our participation in the community day and our outstanding contributions to the Singapore community.

What would your firm wish to see improved or changed in the Singapore legal services sector?

W&C: We would like to find a way for FLFs to do *pro bono* work in Singapore.

Your firm has a successful practice in Singapore but some other FLFs have not been as successful. Would you know about what happened?

Duane Morris: I would like to say that I do think that, first of all, I wish we were successful. We look successful but like every other firm, we are facing our own challenges. Singapore has to be very careful at this time to remain competitive. Costs for FLFs have increased dramatically. I mean basic real estate. The amount of costs associated with running a firm in Singapore today are totally different than last year, and obviously two-fold or three-fold of the year before. Even SLFs are going to find it very challenging if you were to think that all of these firms had a rent to pay and that, at the end of the day, our fees for SLFs are going to have to increase naturally in order basically to meet your payroll and your costs. I do think that you have a problem, in general, worldwide with firms, and Singapore is basically no exception. We live in a world which demands immediate rewards and immediate satisfaction no matter where you are. You buy some stock, you want the next day for it to increase in value. You open a shop and you want it the next day to be selling more than you had before. It is a sickness or problem of the times

that we live in. It happens exactly the same in Mexico, in Singapore as it is in the US. The immediate satisfaction. I think in Asia, and in Singapore in particular, one has to consider that the immediate rewards are not as immediate as we would like. We still live in a society where contacts are important, in which people like to do business with people whom they know, in which people want to see firms established before they can entrust some matters, in a society which whether we recognise it or not, I believe, really wants to see people committed to Singapore before anything else. This usually is totally different from what we have in New York. In New York, you go in and open, and within a month you know whether you are going to be successful or not successful depending on how (it is all a matter of numbers) competitive you are in some areas, and the people who are with you. Asia is a little different, so I do think that there's confusion over what traits are needed to open an office in Asia. That would be patience. Hard work and patience.

What would be the best way to get this message across to incoming FLFs?

Duane Morris: I don't know. I do think that it is very difficult for any firm to learn from another firm. Again because we are dealing with human beings and nobody learns the same way. One has to experience different things to recognise. But I do think that what you and I are talking about today is going to change in the future. The legal scene in Singapore will not be the same six months from now, one year from now. The costs of practising law in Singapore, the costs for companies seeking legal advice in Singapore, will alter dramatically the composition of the firms. Having FLFs in Singapore under the light of the enhanced JLV puts an incredible amount of pressure on the smaller SLFs and the medium-size firms that they need to make some sort of alliances, changes, changes in vision, so we are at the crossroads. Unfortunately, none of us can really predict what is going to happen. I believe that it is going to be good. I believe that ahead of us there is going to be challenging times for both SLFs and FLFs alike. *IS*

Inter Se thanks Mr Gavin MacLaren, Allens Arthur Robinson; Mr Eduardo Ramos-Gómez, Duane Morris Singapore LLP; and Mr Doug Peel, White & Case LLP, for their time in granting us this interview.

GLOBAL BUSINESS AND THE CORPORATE COUNSEL

CORPORATE COUNSEL OF SOME MULTINATIONAL CORPORATIONS ("MNCS") BASED IN SINGAPORE SHARE THEIR VIEWS ON WHAT GLOBALISATION MEANS FOR WHAT THEY DO AND HOW THEY DO IT.

By **Koh Sock Hoon, Senior Legal Counsel, Legal Division, Singapore Land Authority**

AS a country at the crossroads between East and West, Singapore has undeniably benefited from globalisation in trade and industry. As Singapore pushes ahead with plans to liberalise the legal services sector, and to grow a regional legal services hub, how has the in-house role changed and what are the challenges facing corporate counsel?

I had the pleasure of speaking with the heads of legal services in three multinational organisations on their experiences and views. From Unilever Asia Pte Ltd, I spoke with Ms Linda Wong, General Counsel, Asia-AMET,[1] together with her colleague, Mr Yee Chiau-Sing, Legal Director, Asia-AMET and General Counsel, South East Asia. I also spoke with Mr Gabriel Nguyen, Director of Legal (Asia-Pacific) for SITA (Société Internationale de Télécommunications Aéronautiques); and Mr Mark Badger, Group Head of Legal, Wholesale Banking Division, Standard Chartered Bank. The interviewees, together, undertake legal work in and for jurisdictions across the seven continents. All of them are based in Singapore. Here are their thoughts on how globalisation is affecting the role of the in-house legal practitioner.

What does globalisation mean for the in-house legal team in your organisation, in terms of the nature of work, the knowledge required, *etc*?

LW & YCS: Due to the different time zones of countries in the Asia-AMET region, we put in longer working hours. Also, Unilever's contracts are more challenging in an increasingly globalised and competitive world. The regional team handles mostly contracts which traverse several countries' laws and regulations. We spend a lot of time

1 "AMET" is short for Africa, Middle East and Turkey.

exploring how a regional master contract can fit everyone involved. Technology has made it easier to manage our work, although it adds to the stress too.

GN: As I see it, globalisation has brought about a common adoption of certain Anglo-American concepts in the legal business world. For example, the concept of exclusion of indirect losses which originated in common law contracts has become ubiquitous in all contracts regardless of their governing laws. So, in order for an in-house legal team to deliver pertinent advice, the team needs to understand legal concepts at the global level and at the local law level. Recruiting counsel with diverse backgrounds into the team provides a head start in reaching such understanding.

Secondly, I see growing pressure from our Asia-Pacific customers to have SITA contracts governed by local laws. Due to historical reasons, SITA's standard contracts are governed by UK, Belgian or US laws. This can lead to difficulties as a contract drafted under one governing law is subject to another governing law which does not necessarily recognise the concepts written into that contract.

Thirdly, there is a growing need for counsel to be based closer to the business operations, to be in the "field". SITA has two counsel based in India and China as these are strategic markets for SITA. As my team is spread out over three cities (Singapore, New Delhi and Beijing), team communication becomes all the more critical. This is when you really test the meaning of the words "teamwork" and "team spirit".

Lastly, globalisation means dealing with cultural and language differences. Business etiquette is important – knowing how a meeting starts, how it ends, who speaks first and how issues are sometimes resolved before the formal meeting. Language differences can result in long negotiations. It's not true that English will get you everywhere. In China, even though some Chinese customers are fluent in English, they expect suppliers to speak their language because, well, you are in China. In India, there were instances when both the customer and I spoke English but conversation was slow because we could not understand each other's accents!

MB: We have a global team of corporate counsel situated in eight different centres in Asia, and in London, Dubai and New York. It often happens that a trade starts in one centre and is passed along to another to be completed. Often, teams will schedule a call to talk through outstanding issues on a transaction or possible solutions. We have also formed internal focus groups whereby counsel across our network come together regularly via teleconferences to share their expertise in specific areas/transactions, *eg*, commodity finance, derivatives and aircraft finance.

How do you ensure that the organisation gets the legal support that it requires in all the countries under your purview?

LW & YCS: We use a combination of internal and external legal resources. As Unilever has businesses in a diverse region with different

cultures, business practices and languages, recruiting local country in-house counsel helps to substantially minimise legal spend (typically one to three in each location). In some countries (*eg*, Thailand, Indonesia, Vietnam), a substantial proportion of Unilever agreements are in the local language. Local counsel have intimate knowledge of the local operations and local laws.

We instruct external lawyers for litigation and significant projects, *eg*, regional/global outsourcing transactions, mergers and acquisitions ("M&As"), disposals, and new areas such as anti-trust laws. We do not have a fixed panel of external firms. We select the firm which is best suited for the role based on our previous experience and their areas of specialisation. We don't necessarily use international law firms – law firms are only as good as the people in them, and international firms may be conflicted out in some countries when we have a deal that spans across Asia-AMET.

GN: The role of my department is to ensure that SITA operates within the framework of the laws and regulations in the countries under our responsibility. We strive to strike that delicate balance between growing the business and protecting SITA's legal interest, as well as upholding corporate values and policies. Diversity is key. My regional team specialises in corporate and international business law, which is important for SITA's business. In addition, the team is diverse in terms of industry background (aviation, IT/telco, shipping, oil and gas), legal education (in both civil and common law systems),

> "We select the firm which is best suited for the role based on our previous experience and their areas of specialisation. We don't necessarily use international law firms – law firms are only as good as the people in them ..."
>
> **– Unilever Asia Pte Ltd**

cultural background and language proficiency (English, Mandarin, Cantonese, Hindi, Vietnamese and French). We work on a shared-resources model, *ie*, not country-specific, and through close teamwork, we can provide most of the legal support required in the 54 countries under our purview.

We rely on external counsel for advice on matters such as arbitration, employment, competition, corporate secretarial and M&As. We have a panel of law firms and we tend to use firms who have worked with us before, as they understand SITA's business. It's also important that the law firm "fits" with the complexity of the question. Big is not always the best.

MB: We work closely with the businesses within the wholesale banking division to provide the legal support required, where it is most needed. We try to be clear, current, balanced, timely and measurable in our advice. In terms of team set-up, we hire counsel with deep experience in particular business areas, and ensure their skills are deployed effectively and remain current.

We also designate global product specialists who are the first point of call for the businesses they support and are responsible for the skills of counsel supporting those businesses. In terms of management, the regional and country heads meet regularly through teleconferences to discuss and resolve issues, and every month, either I or the group head of legal will host global calls for the entire network of counsel.

We are supported by external lawyers in most countries, who are appointed from our panel of international law firms. We find that it works best when the firm has offices in each country involved in the transaction at hand. We also appoint local law firms to satisfy extra skills requirements. As you would expect, support is more robust in countries with a longer history of international banking transactions.

What type of legal advice does management in an MNC such as your organisation look for?

LW & YCS: Management looks for fast, practical solutions and advice which aids in decision-making. For MNCs like Unilever, legal advice must never be "academic". It must be business-oriented and capable of being translated to the issues and operations at hand.

GN: Companies such as SITA use in-house counsel because we are accessible ("down the corridor"), we understand their business and we are cost-competitive compared to private practice lawyers. Therefore, my business colleagues expect fast turn-around times, value-added proactive legal advice, an understanding of their business objectives and contribution to their achievement within the parameters of the law.

> "... an MNC new to Singapore or Asia is more likely to be influenced by the policies of its parent. So it is not always an issue of being receptive or not to the use of Singapore law – but merely one of policy."
>
> **– Standard Chartered Bank**

MB: Management looks to corporate counsel for assurance on internal policy and procedure as well as local laws and regulations. We are expected to be aware of possible legal risks, and the type and degree of risk. Most importantly, we are expected to take appropriate steps to mitigate or avoid risks which are identified, as well as monitor for other material risks which may arise.

What would you say are the most challenging aspects of the in-house role?

LW & YCS: Retention and recruitment of local legal talent in this region is a huge challenge. With increasing globalisation and competitive rewards schemes, this is an area we often find ourselves having to keep pace with other MNCs and local and international law firms expanding into this region.

Another area is the expectation of the Unilever head office that company policies and guidelines are complied with. The Unilever Code of Business Principles, and the policies plus guidelines therein form the backbone of our business (*eg*, there are policies on who can own trade marks). In relation to corporate governance, we track and guide litigation of above €1m. If the suit involves more than €5m, we closely review the matter, and these cases are also audited by our external auditors. As you are aware, litigation exposure, after Sarbanes-Oxley, is closely monitored. They want to know if the risk is low, and whether provision is made or not.

Last but not least, we always need to ensure that our legal team provides constructive and practical solutions to help our businesses navigate the greys, and not act as the traditional "black and white" lawyer.

GN: In my view there are three aspects. Firstly, we have to meet expectations of our internal customers without relenting on our role of protecting the company's interest. Sometimes, Legal can be seen as the "deal-preventor". In my team, we always ensure that when we say "no" to a deal or set-up, we communicate the reasons for our opinion and provide an alternative solution to reach the same commercial aim. Ultimately, we aim to be their trusted advisors.

Secondly, we are mindful of moving up the value chain and concentrating our time on high-value work – areas where there are real risks for SITA, and anticipating management's needs in line with corporate strategy. My team has been moving away from low-value routine work such as the issue and review of standard confidentiality agreements.

Thirdly, ethics and compliance have never been more important than now. In the wake of corporate scandals, there are more and more regulations and greater scrutiny of corporate behaviour. SITA makes no compromises in this area and SITA Legal ensures that all employees follow the highest standard in their business operations. I would say that at times, complying with the law is not enough and we pay strong attention to anything with reputational risk so as to guide SITA management in its business decisions.

MB: Most challenges facing a corporate counsel are really not that different from a lawyer in private practice. We have strict client

deadlines, budget pressures, management commitments, demanding clients, all whilst keeping current with market innovation. However, corporate counsel are required to assist their clients in making commercial or judgment calls with regard to a particular legal risk. The challenge is: your advice must never conflict with your main responsibility of governance.

Do you think Singapore corporate counsel are equipped to meet the demands of an increasingly global role? Does the role of an in-house lawyer extend beyond the strictly legal?

LW & YCS: The Singapore legal profession is of a very high standard; it's one of the better ones in the region. Regional companies trust the legal system in terms of its quality and integrity. Having said that, in-house counsel at Unilever are different from external lawyers. We do not sit on the fence. We are required to take a position and justify that position based on our familiarity with Unilever operations. The role does extend beyond the strictly legal as we are business partners to our internal stakeholders and we are also part of the business teams in making decisions in all projects that we handle. We often have to balance our legal views after taking into account the business needs and consequences of a proposed decision.

GN: Singapore is historically a multiracial and multilingual society. Today, it is acknowledged that Singapore's corporate counsel comprehend cultural differences. I would say this is an asset in view of globalisation of the corporate counsel role.

“Today, it is acknowledged that Singapore's corporate counsel comprehend cultural differences. I would say this is an asset in view of globalisation of the corporate counsel role.”

– SITA

The role of an in-house lawyer, as I see it, extends beyond the strictly legal. You must be a good lawyer, but what matters equally, if not more, is to adopt a balanced approach and have the right "soft" skills.

MB: Our Singapore-qualified wholesale banking counsel are well equipped to meet the demands of an increasingly global role. Most of our counsel are not confined to Singapore-related work but work on many cross-border transactions. To broaden their exposure, we have a system in place for counsel with expertise in specialised areas to train other counsel, and we rotate our counsel to sit with the businesses they are supporting, *eg*, in the dealing room.

Do you see the role of corporate counsel growing or expanding in the short term (five years) and long term (ten years)?

LW & YCS: The in-house role is growing. While MNCs like Unilever are outsourcing a lot of functions, it is unlikely that the legal function will be outsourced as business will always need an internal legal business partner who knows the background and operations of the company. Also, sometimes

there can be a huge difference in quality between advice given by an in-house counsel and an external lawyer. The in-house role will grow in the next five to ten years as there is now an increasing understanding amongst businesses that external legal costs can be higher than having a good in-house counsel. Further, using external lawyers often means there will be a lack of continuity in the history of cases.

GN: If you look at the US model of corporations, the role of the corporate counsel is very strong with general counsel reporting directly to the chief executive officers (this is the case for SITA). In Europe, traditionally, the corporate counsel reports to the finance director although this is changing. In time, I think corporate counsel will move towards the US model, and have more and more influence on the board. It is a consequence of there being more regulations, more laws, and more transparency being required of organisations.

MB: Over the short-term, the use of in-house support should continue to grow. The size of corporate counsel teams has grown over the past ten years. One reason for this in the banking industry is the development of standardised documentation and master agreements. Transactions that were once negotiated exclusively by external counsel are now completed in-house. Our counsel also work closely with the businesses to develop new products, saving time and costs for the bank. In-house teams can provide better value as they understand how internal infrastructure operates to facilitate certain transactions, and are able to advise swiftly with internal policy/procedures in mind. However, as cost efficiencies are always a strong driver in determining support models, the next stage could see standardised work flows processed by paralegals under the supervision of fewer corporate counsel.

Do you see MNCs becoming more receptive to Singapore law as the governing law of their transactions?

LW: Certainly. Singapore is a regional arbitration centre. It's a financial hub. It has a sound legal system with excellent rules and regulations, clear processes and procedures. If I had my choice, I would choose Singapore law for all transactions in the region. However, there are many other considerations when the issue of governing law is discussed in negotiations.

GN: In Asia-Pacific contract negotiations, Singapore law is often the acceptable "middle-ground", *eg*, when dealing with a Vietnamese customer, it is the compromise solution between Vietnamese law (preferred by the customer) and Belgian law (preferred by SITA).

MB: Yes, I believe Singapore law is being used as the governing law in more transactions. However, an MNC new to Singapore or Asia is more likely to be influenced by the policies of its parent. So it is not always an issue of being receptive or not to the use of Singapore law – but merely one of policy. *IS*

WHAT CAN I DO? READ LAW ...

STUDENT PERSPECTIVES ON THE STUDY OF LAW TODAY AND ON PERSONAL EXPECTATIONS OF A RAPIDLY EVOLVING PROFESSION.

By **Jason Gabriel Chiang, undergraduate, Singapore Management University, and Jeth Lee, undergraduate, National University of Singapore**

MY name is Jason Chiang and I am a second-year law and third-year psychology student at the Singapore Management University. When asked to share my thoughts on the study of law today, the following words came to mind:

> You either become a doctor or a lawyer or ... you marry one.

The advice of the typical Asian mother is as common today as it was in previous generations. For at least this law student, however, expectations of a comfortable life are tempered with an awareness of the challenges of succeeding in what is becoming an ever more competitive professional environment. I speak for myself, and for others like me, when I acknowledge that there is a genuine apprehension that the legal career which starts out as time-consuming may turn into one that is life-consuming.

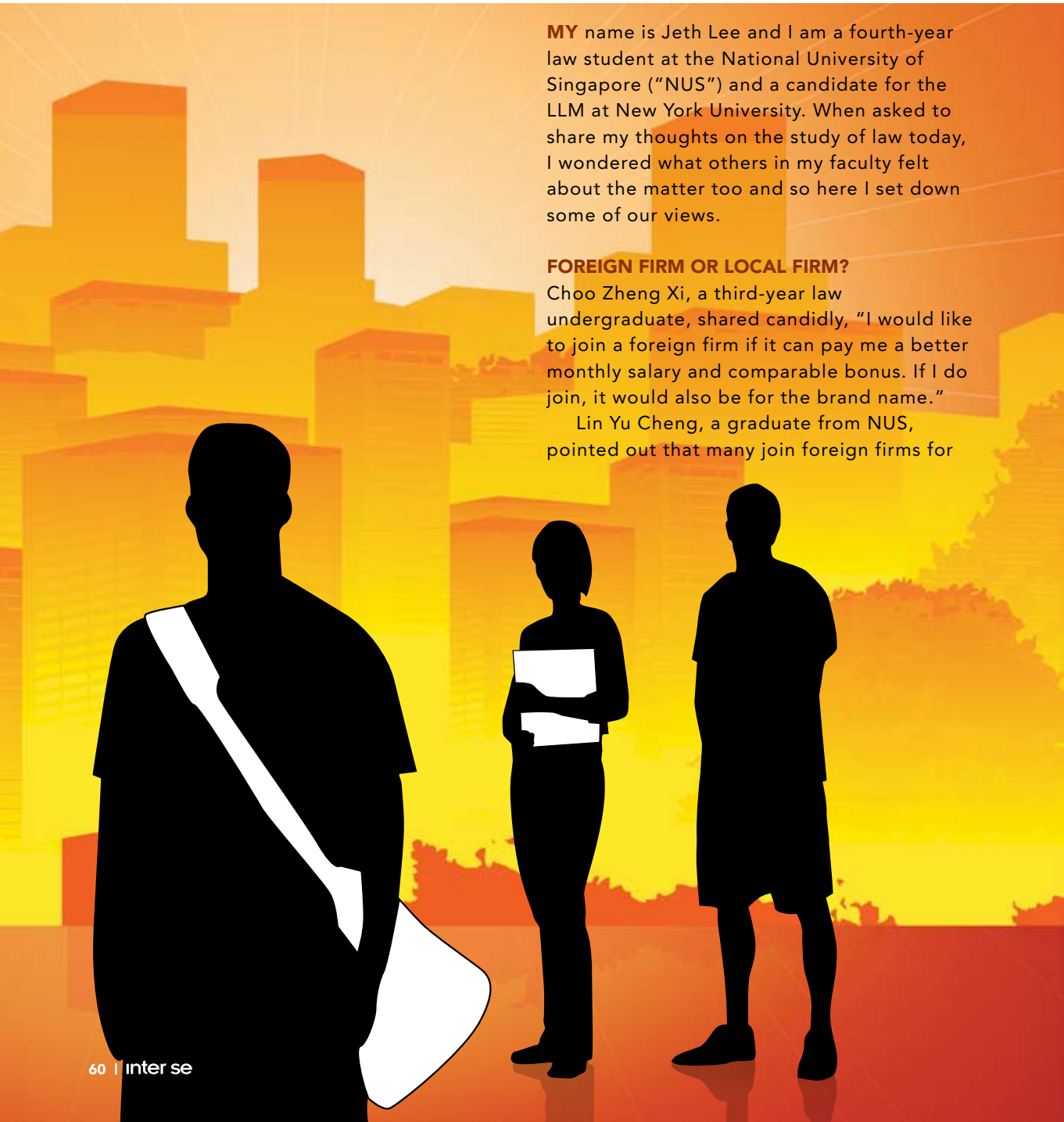
From a survey conducted by the Law Society of Singapore in 2001, the "stress due to pace of work and workload", as well as secondary factors like a "lack of a social life" and "difficulty in balancing work and family life" were identified as the problems facing a steadily declining population of lawyers. It is not only the young lawyers who have expressed discontent, even law students have serious apprehensions about entering the legal profession, especially where opportunities abound for them to excel in other vocations which are less exacting on their lives. Compounding this attrition is the allure outside Singapore.

In the past, many factors prevented law graduates to venture abroad, especially cost and access, but now, it almost seems like it is the smarter choice. Globalisation has revolutionised the way businesses are done, borders are blurred between countries and disciplines, and the legal sector is not exempt from this effect.

One can pursue a career overseas or maybe, one may be interested in joining a foreign law firm in Singapore, or one may contend for a position amongst the local legal giants, or perhaps, one can pursue a law-related occupation; conversely, one may simply choose not to have anything to do with law. So, where once the options may have been between going to a local university

and reading law or reading some general arts subject, now a student might have the options of reading law locally or reading a general arts subject overseas in making the choice a much more complex and, some would argue, less obvious one.

Once the decision has been made to read law locally, the law student today is fully aware that being familiar with local laws is simply not good enough if he or she wants to cut it in a profession that is becoming increasingly multi-disciplinary and multi-jurisdictional. This pressure to know so much within, what appears to be, so little time can have an unhealthy effect on how a student manages a work-life balance even within the school setting. In this regard, the law school becomes an important structure which a student's expectations of self and of the profession can be effectively mediated. A holistic curriculum that gives the student a glimpse at real-world practice is ultimately key in ensuring that the student is not unnecessarily apprehensive about the demands of practice and in motivating the student to adopt a proactive and flexible approach to learning. From my experience thus far, it looks like we are getting there.



MY name is Jeth Lee and I am a fourth-year law student at the National University of Singapore ("NUS") and a candidate for the LLM at New York University. When asked to share my thoughts on the study of law today, I wondered what others in my faculty felt about the matter too and so here I set down some of our views.

FOREIGN FIRM OR LOCAL FIRM?

Choo Zheng Xi, a third-year law undergraduate, shared candidly, "I would like to join a foreign firm if it can pay me a better monthly salary and comparable bonus. If I do join, it would also be for the brand name."

Lin Yu Cheng, a graduate from NUS, pointed out that many join foreign firms for

exposure to cross-border deals and the experience of working with different people in a varied environment. "The last thing you want is to join a global firm and be posted to Singapore and be confined to practising Singapore law – how boring would that be?"

Rachel Leow, a second-year law undergraduate, has a different view. She believes that joining a foreign law firm with a licence to practise Singapore law provides the best of both worlds. Not only would a foreign law firm allow her to gain more international exposure by virtue of cross-border transactions and provide attractive opportunities for secondment overseas, she would also have the option of contributing to the local legal landscape in Singapore.

When queried as to what the deciding factor for them would be when choosing a law firm, Rachel and Yu Cheng agreed that it is the pedigree of the firm and the range and depth of work the firm is able to provide in a particular field that would sway their decisions. Zheng Xi shared that the remuneration and promotion prospects were of importance to him.

WHAT DOES IT MEAN TO BE A "GLOBAL LAWYER"?

Rachel expressed that the global lawyer is someone who is not satisfied with merely applying black-letter laws but also questions the relevance of established principles to a changing society. Zheng Xi added, "A global lawyer is one with a global outlook but with local roots, who understands how to think globally but act locally."

HOW MAY THE CURRICULUM PREPARE STUDENTS FOR GLOBAL PRACTICE?

Zheng Xi suggests that foreign language acquisition should be integrated. "I think a focus on third-language acquisition or second-language consolidation at the law school will be the cherry to top off an already stellar legal education. The school could leverage on our large, foreign student population to help run optional and affordable language classes for the student body. We could also explore tie-ups with professional language centres."

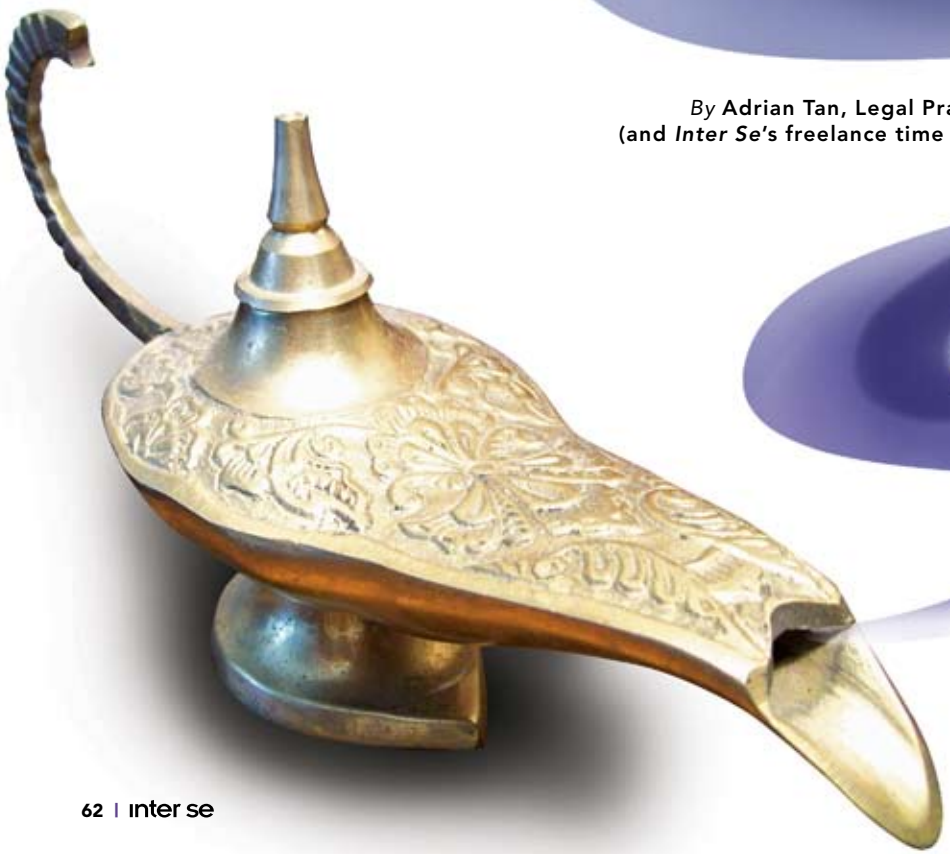
A PERSONAL PERSPECTIVE

There exists a general sentiment of the responsibility of the individual in eking out his or her own path as a lawyer and recognition that there is only that much that a law school can impart. Lacunae in what the law school provides no longer present themselves as barriers to the global lawyer, but as opportunities to exercise his or her initiative. Increasingly, this gap is being further reduced. Exciting opportunities for the law student abound, fuelled by the competitive climate of higher education. Examples of this include numerous exchange programmes to overseas universities and the latest draw of the NYU-NUS dual-degree programmes where a student may concurrently receive both undergraduate and post-graduate education (an LLM or a JD) in either four or five years respectively. The law and its study are no longer tied to globalisation's apron strings but are now moving in tandem. *is*

THE FUTURE OF SINGAPORE LEGAL PRACTICE

NOT QUITE A MAGIC CARPET RIDE …

By **Adrian Tan, Legal Practitioner**
(and *Inter Se*'s freelance time traveller)



Last September, an extraordinarily high-powered committee ("the Committee") published its recommendations on developing our legal sector.

The 113-page report advocated a thorough root-and-branch reform, examining and recommending changes in everything from legal education to the liberalisation of the profession.

More significantly, *Inter Se* was informed that litigator Adrian Tan had just been granted the power to travel into the future. Ever eager to bring breaking news to the legal community, *Inter Se* pounced on this opportunity by commissioning Mr Tan to write the following article on the state of the practice of law in Singapore in the year 2020, in the light of the Committee's proposals.

This is Mr Tan's report.

HALF a year ago, I was contemplating giving up legal practice in favour of opening a coffee shop. On my way to meet my firm's partners for coffee at the Academy Bistro, I found an old lamp sitting on the sidewalk outside the old Supreme Court building. Having both read and watched "Aladdin and the Magic Lamp", I picked the lamp up and gave it a forceful rub. A genie appeared. After the usual courtesies were exchanged ("O Master, thank you for freeing me from centuries of captivity, the window to my lamp was barred, so I could not escape …" *etc*), he granted me the standard-issue three wishes.

Naturally, my first wish was for an extension of time to file a summary judgment application. The second was for untold personal wealth (since I was of the opinion that I already possessed great physical beauty). The third was this: I asked to be transported to the future so that I could see what the law firm of tomorrow would look like. This was important as I was planning to leave the profession and I wanted to make sure that my decision was as informed as possible.

"O Master!" the genie exclaimed upon hearing my third wish, "that will be a sight that will truly amaze and astound you". With a flourish, he blew blue smoke into my face. A coughing fit and still stinging eyes later, I found myself magically transported a dozen years into the future (this I knew because the kind genie told me so), and standing in what appeared to be a lavish reception area to be exact. The floors were inlaid with precious stones, and the walls covered by materials of great rarity and expense, such as Persian rugs, ancient Chinese tapestries and gilt-framed un-amended writs of summons.

"This must be the entrance to a vast and mighty law firm", I gasped in awe.

"Not at all, O Master", replied the genie in a similar, breathy, hushed tone. "It is the outer room of a humble partner's office."

"What does he practise?" I asked. "Some complex financial thingumajig? Super-complicated M&A's? What area of expertise does he have?"

The genie uttered two simple words, "class actions", and continued. "He represents sizeable numbers of plaintiffs who seek redress against large and powerful entities who commit wrongdoing on a mass scale."

"Those are permitted? Here? Now?" I stuttered in disbelief.

"Yes, O Master", replied the genie. "Ever since the recommendation of the Committee was made in 2007, lawyers have geared up to pursue this new area of work. No longer will mighty corporations ignore the pleas of the humble individual. Now citizens may band together to protect their rights, and claim compensation for their grievances."

"But ... but ...", I continued to stammer, "class actions cannot be mounted in Singapore. How will the lawyer be paid?"

"On a contingency basis", answered the genie. "After the 2007 report, the Legal Profession Act was amended to allow advocates and solicitors to recover fees on a success basis, up to 100% of the normal fee a lawyer would have charged in the absence of a conditional fee arrangement."

"That's absurd", I cried. "That would allow ordinary people to have access to justice on an unprecedented scale. That may be superficially good for the public, but the amount of new work generated would overwhelm our tiny lawyer population."

Just then, an army of black-suits trooped past me and into an inner sanctum. I followed, in my own now slightly dusty black suit, silently as was necessary under the circumstances. Owing to the magical powers of the genie, I was unseen to all others. But even the genie could not make a litigator unheard.

I saw what appeared to be a partner (he had that slightly portly look of someone who takes longer than allotted one-hour lunches) briefing 20 of his minions (all of them relatively more gaunt looking). "What a gigantic legal team", I remarked. "One partner and 20 associates. I thought there would be a lawyer shortage. I don't see how even our two universities would have been able to supply so many lawyers."

"Forgive me, O Master, but I must correct you. Those are not associates but contract trainees", said the genie.

"What are those?" I asked, puzzled at the existence of this new species.

"Law graduates who are training to be fully-qualified lawyers", explained the genie.

"You mean pupils?" I said. "Is that their pupil master?"

The genie shook his enormous, cobalt head. "Pupils no longer exist", he said, "and neither do pupil masters. Both have become as extinct as Ah Meng".

"Technically, Ah Meng is dead, not extinct ...", I began. The genie continued pretending not to hear me (that, he could do), "in the bad old days, pupils were nothing more than a source of cheap labour in some firms. They carried out menial or time-consuming tasks instead of receiving meaningful on-the-job training. Many never even interacted with their pupil masters. The entire concept of a senior lawyer training his pupil in the ways of the Bar had become an anachronism. The Committee's suggestions for reform eventually meant doing away completely with the concept of pupillage. Graduates now sign training contracts with the law firm, not an individual partner. The contract obliges the firm to engage its trainees in a structured, learning programme. It has become a major attraction

for graduates from overseas as well. Many of them come to Singapore specifically to train with the better law firms here. In time, they stay on and add to our burgeoning legal population. They hail from every continent: Europe, Asia, Americas ..."

I was still puzzled. "How can we allow overseas lawyers to enter our profession indiscriminately? It will lead to chaos and a drop in quality!" I was outraged (and a little threatened).

The genie observed my reddening demeanour with a smile on his sizeable indigo face. "Calm down, O Master", he soothed. "Quality is higher than ever, thanks to the gatekeeper. Every law graduate will have to pass a special course before admission to the Singapore bar ..."

"You mean the DipSing?" I assumed.

The genie shook his big, blue head. "When you assume, you make an ass out of 'u' and 'me'. The DipSing has gone the way of Ah Meng too", he chuckled. "It was too short and, worse, often repeated the content of courses already taken overseas, albeit with a mild local flavour."

"By teaching students how to use 'lah' in written submissions?" I offered my own, superior attempt at humour.

The genie looked at me with pity reserved for the delusional. With a wave of his hand, he whooshed me into a giant lecture hall where hundreds of students were actively debating. The genie said, "graduates now undertake the year-long Vocational Training Course administered by the Institute of Legal Education. Attendees tailor their own courses to learn about areas of potential specialisation, such as advanced civil procedure, corporate restructuring ..."

"There are some senior practitioners I know who might benefit from a course like this", I interrupted half-jokingly.

"Fear not, O Master", said the genie. "All have to undergo the Institute's compulsory Continuing Legal Education ("CLE"). Every year, all lawyers, large or small, young or old, foreign or local, clever or just reasonably quick, must upgrade themselves by attending mandatory courses accredited by the Institute."

"That will just lead to an increase in the number leaving the profession", I predicted. Ever the logician, I continued, "unless the standards are lowered, in which case the entire CLE exercise becomes mere lip service".

The genie laughed a loud, lavender-breathed laugh. "Far from it, O Master. The number of practitioners swells with each passing day!"

"Why?" I asked. "Why would lawyers submit themselves to such brutal demands?"

The genie replied beatifically, "one simple reason. Come!" I was swooshed into a registrar's chambers where two lawyers were furiously contending. "This, O Master, is a taxation hearing."

I glanced at the figures in dispute. "Surely", I said in wonder, "this is the bill for a landmark trial lasting many months led by dozens of Senior Counsel".

"Not at all", replied the genie. "This is an unremarkable trial lasting weeks, not months, conducted by competent juniors. The increase in taxed costs, recommended

by the Committee, has had a snowball effect. Higher taxed costs lead to higher indemnity costs, which in turn lead to a gradual but appreciable increase in income. Lawyers are justly rewarded for the stress and hard work that they endure."

"Cost increase leads to public disquiet, I'm sure. There must be a decrease in suits filed", I challenged (being a superior twit).

"The converse is true, O Master", said the genie. "In the past, the gap between costs taxed on a standard basis and actual costs incurred was a significant obstacle to litigation. Further, the inability of a party, particularly a defendant, to recover costs of litigation was also an impediment to access to justice. With higher taxed costs, the successful party stands a better chance of recovering what he has had to spend on litigation. That improves the climate for parties who have a sincere need to use your services."

I shook my head in amazement. "Well", I said, "that's certainly good news for the civil bar ..."

"Wait, O Master", said the genie.

"You're not whisking me away again ..." I began, just before the genie whisked me away, this time to a large, wood-panelled room full of lawyers.

"Is this a firm of ...," I hesitated.

"This is not a firm," said the genie without hesitation.

"Wait", I said. "Aren't these lawyers?"

"Yes, they are", replied the genie, "but this is chambers for criminal defence counsel. Criminal lawyers are a special breed, crucial to the legal system, yet under-rewarded and less glamorous. Chambers such as this are set up to allow such individuals to defray costs, and provide mutual support and general encouragement to others engaged in or wishing to pursue criminal legal practice".

"Idealists", I murmured. "I bet they even do *pro bono* work."

"Of course", said the genie matter-of-factly. "There's no way of stopping them."

With that confident declaration, I found myself returned to the sidewalk outside the old Supreme Court building in present time (I know because the genie told me so). There was a warm feeling in that usually cold, empty place in the left side of my chest and a strange stirring. Putting my hand to my left breast pocket, I felt my mobile phone vibrating. A quick check showed that I was late for my meeting with the partners.

To the genie I then said, "thank you, dear genie, for showing me this glimpse of a fantastical future for my profession. I had thought the future to be dominated by technology and mega law firms, with no place for the other components of the legal system that give it life and humanity. I am so glad that there is hope for all of us. I am reconsidering my decision to leave practice".

"Please do", replied the genie. "There is much to look forward to. But then, the future is already here." He pointed to the gigantic disc atop the new Supreme Court building. Slowly, the disc rose into the air, propelled by jets of bright orange flame. It hovered in mid-air for a moment, revolving like a top, then gained considerable altitude before zipping into the stratosphere.

"Was that recommended by the Committee?" I asked the genie.

"No, O Master, the appellate judges thought it would be cool to have a flying courtroom."*is*

Mr Tan has decided that a chance to be heard in a flying courtroom is far cooler than his own coffee shop. Inter Se *is happy to report that Mr Tan has decided to stay on in the profession.*

CUTTING IT AS A GLOBAL LAWYER

INTER SE ASKED ALS INTERNATIONAL LTD AND LAW ALLIANCE, TWO RECRUITMENT AGENCIES SPECIALISING IN RECRUITING LEGAL TALENT FOR INTERNATIONAL PLACEMENTS, ABOUT THE QUALITIES THEY LOOK FOR IN A "GLOBAL LAWYER".

DENVY Lo, a Consultant with ALS International Ltd, succinctly states the expectations:

A global lawyer should have a strong personality to be able to take on new challenges that arise constantly in a fast-changing world. Clients therefore demand for bright lawyers with top-tier experience because these lawyers can think fast on their feet and will hit the ground running from day one.

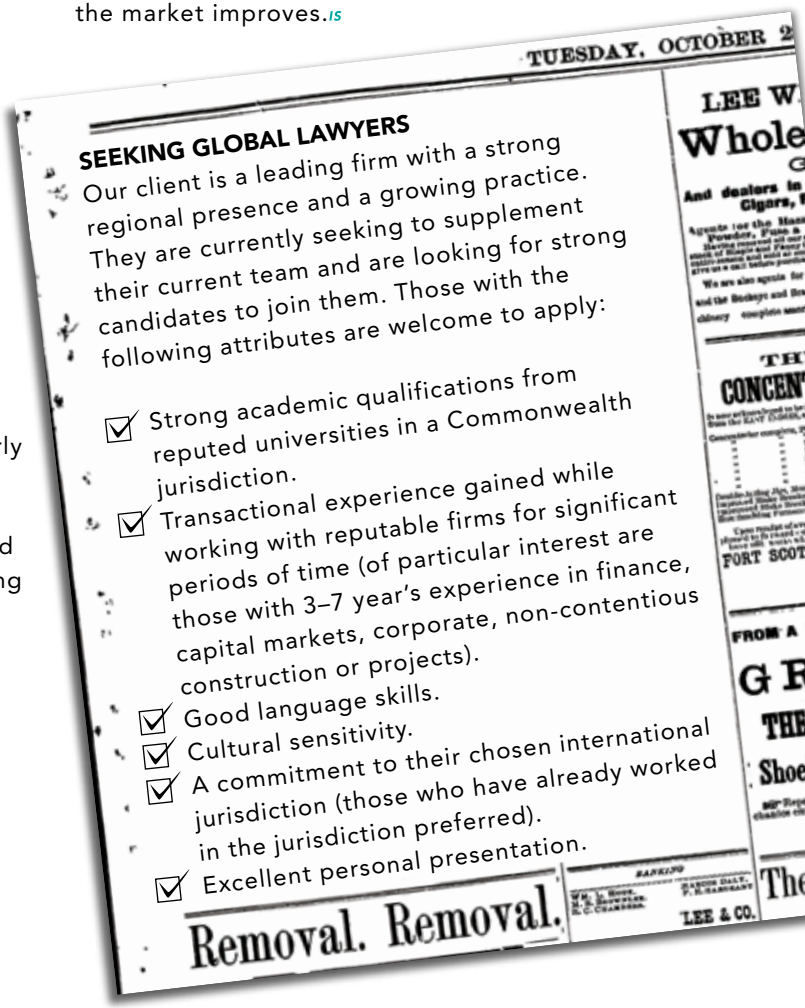
Because legislation changes occur almost on a daily basis, I also look for a curious mindset in a lawyer, which usually means he/she is updated with the latest changes in the region. Other attributes like creativity, excellent presentation skills and attention to detail are equally important.

JEREMY Small, Director of Law Alliance, further elaborates:

> When the candidates we work with speak of being a 'global lawyer' they are not generally referring to being lawyers who undertake cross-jurisdictional work. For us at Law Alliance, the reference is usually focused on their ability to transport and apply their legal skills to a jurisdiction other than the one in which they qualified.
>
> Given the favourable market we have experienced over the past few years, candidates would be forgiven for believing that all it takes to be a global lawyer is a CV (*curriculum vitae*), a recruiter and the desire to work overseas. Sadly, however, when it comes to legal recruitment, past behaviour is not always the best indicator of future behaviour. This is particularly true in a tightening market. When there are more applicants than jobs, it is those who have prepared themselves from the very beginning of their career who are able to make the leap.
>
> While requirements change as markets evolve, if we as recruiters were to draft an advertisement which incorporated our client's current wish list for the global lawyer, then it would look something like this (see inset).

While there are always exceptions, the reality is that the more boxes you tick, the more likely it is that your application will be successful.

All in all, if you want to be a global lawyer and have the opportunity to work outside your home jurisdiction, then the best advice your recruiter can give you is that grades do matter, so study hard, choose a transactional practice area, do not move around too much; but do position yourself with a leading firm so that, if the market will not allow you to move today, you are prepared to move when the market improves. *is*



TUESDAY, OCTOBER 2

SEEKING GLOBAL LAWYERS

Our client is a leading firm with a strong regional presence and a growing practice. They are currently seeking to supplement their current team and are looking for strong candidates to join them. Those with the following attributes are welcome to apply:

- ☑ Strong academic qualifications from reputed universities in a Commonwealth jurisdiction.
- ☑ Transactional experience gained while working with reputable firms for significant periods of time (of particular interest are those with 3–7 year's experience in finance, capital markets, corporate, non-contentious construction or projects).
- ☑ Good language skills.
- ☑ Cultural sensitivity.
- ☑ A commitment to their chosen international jurisdiction (those who have already worked in the jurisdiction preferred).
- ☑ Excellent personal presentation.

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