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ASEAN'S LIBERALIZATION OF LEGAL SERVICES: THE SINGAPORE CASE

Pasha L. Hsieh^{*}

ABSTRACT

This article examines the liberalization of legal services in the Association of Southeast Asian Nations ("ASEAN") within the framework of the ASEAN Economic Community and ASEAN's free trade agreements. Although trade in legal services is important to ASEAN's goal as a "single market and production base," the article challenges the weaknesses of ASEAN's legal services liberalization. It then explores Singapore's experiment on the regulations of foreign law firms and foreign lawyers, which have become substantially liberalized in the past decade. The article argues that while Singapore may serve as a positive example, ASEAN countries should be cautious of the gap between Singapore's legal framework and the actual practice of foreign law firms. By analyzing the Singaporean concepts of Formal Law Alliances, Joint Law Ventures and Qualifying Foreign Law Practices, the article provides recommendations for ASEAN governments and legal communities for liberalization in the legal services sector.

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KEYWORDS: *ASEAN, Singapore, FTAs, Legal Services, Foreign Lawyers, Law Firms, JLVs, QFLPs*

I. INTRODUCTION

Legal services constitute a critical catalyst for facilitating cross-border transactions and foreign direct investments (“FDIs”) that underpin the multilateral business network. With the shift of global economic power to Asia, the total revenues of the legal services market in the region surpassed \$85 billion with an annual growth rate in excess of 5.3%.¹ Against this background, the article explores the liberalization of legal services in the Association of the Southeast Asian Nations (“ASEAN”) and focuses on Singapore as a case study. As the third largest Asian economy, the fast-growing ten-country trade bloc has become a “new magnet” for FDIs.² To achieve ASEAN’s goal of a “single market and production base” that will attract further FDIs, ASEAN law ministers and legal communities have urged the “progressive liberalization of trade in legal services.”³

This article challenges the weaknesses of ASEAN’s legal services liberalization. It further argues that while Singapore may serve as an example for incremental liberalization, ASEAN countries should be cautious of the gap between Singapore’s legal framework and foreign law firms’ operations in practice. Part II of the article analyzes ASEAN’s economic integration and its implications for the legal services sector. In particular, it examines legal services commitments under ASEAN’s internal and external free trade agreements (“FTAs”) and illustrates the obstacles to selected countries’ progress. Part III explains the evolving changes to Singapore’s Legal Profession Act (“LPA”) and the impact of the island nation’s FTAs with Australia and the United States on the legal industry in the past decade. It provides the most updated discussion on the licenses of Formal Law Alliances (“FLAs”), Joint Law Ventures (“JLVs”), Qualifying Foreign Law Practices (“QFLPs”), and the admission of foreign lawyers in Singaporean courts. Based on Singapore’s case, the article

¹ *Legal Services in Asia-Pacific*, MARKETLINE INDUSTRY PROFILES (Nov. 22, 2012), http://www.alacrastore.com/storecontent/MarketLine_Industry_Profiles-Legal_Services_in_Asia_Pacific-2124-2189.

² *ASEAN: A New Magnet for Foreign Direct Investments*, ASEAN (May 28, 2013), <http://www.asean.org/news/asean-secretariat-news/item/asean-a-new-magnet-for-foreign-direct-investments>. The Association of Southeast Asian Nations (ASEAN) includes Indonesia, Malaysia, the Philippines, Singapore, Thailand, Brunei, Cambodia, Laos, Myanmar (Burma) and Vietnam.

³ See generally ASEAN, ASEAN ECONOMIC COMMUNITY BLUEPRINT—DECLARATION ON THE ASEAN ECONOMIC COMMUNITY BLUEPRINT (2007), [http://noip.gov.vn/noip/resource.nsf/vwSelectImageResourceUri/E3BFD8BB034B9F8B47257672002440DC/\\$FILE/ASEAN%20Economic%20Blue%20Print%20Nov.%202007.pdf](http://noip.gov.vn/noip/resource.nsf/vwSelectImageResourceUri/E3BFD8BB034B9F8B47257672002440DC/$FILE/ASEAN%20Economic%20Blue%20Print%20Nov.%202007.pdf). [hereinafter Declaration on AEC Blueprint]; *Joint Communique of the Eighth ASEAN Law Ministers Meeting (ALAWMM)*, ASEAN (Nov. 4, 2011), <http://www.asean.org/news/asean-statement-communiqués/item/joint-communique-of-the-eighth-asean-law-ministers-meeting-alawmm-phnom-penh-4-5-november-2011-2>; *Southeast Asia Discusses Challenges to Liberalizing Legal Services Sector*, BRUNEI TIMES (Apr. 14, 2011), <http://www.bt.com.bn/news-national/2011/04/14/southeast-asia-discusses-challenges-liberalising-legal-services-sector>.

concludes by providing legal and policy recommendations for ASEAN governments and stakeholders.

II. ASEAN'S ECONOMIC INTEGRATION AND THE LEGAL SERVICES SECTOR

ASEAN member states have diverse geographic sizes and government structures. The divergence of jurisdictions is also reflected in ASEAN's combination of common law, civil law, and Sharia law systems. The 2007 ASEAN Economic Community Blueprint envisioned the establishment of the ASEAN Economic Community ("AEC") as a "single market and production base" by 2015.⁴ As for trade in services, negotiations under the ASEAN Framework Agreement on Services ("AFAS") resulted in eight packages of commitments between 1997 and 2010.⁵ As part of services liberalization, seven mutual recognition arrangements ("MRAs") were concluded and covered professional services including engineering, architectural and accountancy services.⁶ Below, I offer observations on the impact of ASEAN integration on legal services liberalization.

Four ASEAN countries (Cambodia, Malaysia, Thailand, and Vietnam) entered legal services commitments in their WTO accession packages.⁷ Based on the ASEAN Economic Community Blueprint, which promotes the free flow of services, "substantially all restrictions" on trade in legal services should be removed by 2015.⁸ By the same year, ASEAN-based law firms are also expected to allow for ASEAN equity participation of no less than 70% and a MRA on legal services may be developed.⁹ In 2010, for the first time, the Eighth Package of Commitments under the AFAS incorporated legal services, and five ASEAN countries (Cambodia, Indonesia, Malaysia, Thailand, and Vietnam) made specific commitments.¹⁰ With respect to external region-based FTAs, ASEAN states also made legal services commitments under the ASEAN-Korea FTA

⁴ Declaration on AEC Blueprint, *supra* note 3.

⁵ See THE ASEAN SECRETARIAT JAKARTA, ASEAN ECONOMIC COMMUNITY: HANDBOOK FOR BUSINESS 13-14 (2012).

⁶ *Id.*, at 16.

⁷ WTO Secretariat Report, *Legal Services — Background Note by the Secretariat*, at 29-30, S/C/W/318 (June 14, 2010).

⁸ Declaration on AEC Blueprint, *supra* note 3, at ¶ 21, [http://noip.gov.vn/noip/resource.nsf/vwSelectImageResourceUri/E3BFD8BB034B9F8B47257672002440DC/\\$FILE/ASEAN%20Economic%20Blue%20Print%20Nov.%202007.pdf](http://noip.gov.vn/noip/resource.nsf/vwSelectImageResourceUri/E3BFD8BB034B9F8B47257672002440DC/$FILE/ASEAN%20Economic%20Blue%20Print%20Nov.%202007.pdf).

⁹ *Id.*

¹⁰ 2010 Protocol to Implement the Eighth Package of Commitment under the ASEAN Framework Agreement on Services, Oct. 28, 2010, <http://cil.nus.edu.sg/rp/pdf/2010%20Protocol%20to%20Implement%20the%20Eighth%20Package%20of%20Commitments%20under%20the%20ASEAN%20Framework%20Agreement%20on%20Services-pdf.pdf>.

(Cambodia, Indonesia, Malaysia, and Vietnam), the ASEAN-Australia-New Zealand FTA (Cambodia, Indonesia, Malaysia, Thailand, and Vietnam), and the ASEAN-China FTA (Cambodia, Malaysia, Thailand, and Vietnam).¹¹ The most recent milestone that will promote intra-ASEAN legal services is the ASEAN Agreement on the Movement of Natural Persons, which facilitates cross-border movement of skilled laborers, including lawyers.¹²

I contend that the commitments under FTAs misrepresent ASEAN states' actual practice of legal services liberalization. First, five countries (Brunei, Laos, Myanmar, the Philippines, and Singapore) did not commit to liberalize the legal sector under ASEAN FTAs. Due to the lack of a comprehensive regime to govern the legal industry, Laos and Myanmar have retained moderate regulations on foreign lawyers and law firms.¹³ Nonetheless, the Philippines and Singapore represent the two opposite ends of the liberalization spectrum. According to the Philippines Constitution, "the practice of all professions," including the legal profession, "shall be limited to Filipino citizens."¹⁴ Furthermore, the Philippines Supreme Court possesses the exclusive prerogative to regulate the admission to practice law.¹⁵ On the grounds of separation of powers, the Supreme Court even found a Philippines-Spain treaty unconstitutional because it permitted Filipino citizens to practice law in the country using law licenses that were awarded in Spain.¹⁶

Secondly, the fact that Cambodia, Malaysia, and Vietnam included legal services commitments under the WTO, the AFAS, and three ASEAN external FTAs by no means ensures continued liberalization. For example, Cambodian and Vietnamese law firms have, through joint efforts, lobbied authorities to impose a "49% equity limitation" and restrict the practice of

¹¹ ASEAN-Korea Agreement on Trade in Services, Schedules of Specific Commitments (For the First Package of Commitments), Annex/SCI, Nov. 21, 2007, <http://www.asean.org/communities/asean-economic-community/item/schedule-of-specific-commitments-for-the-first-package-of-services-commitments-under-the-asean-korea-agreement-on-trade-in-services>; ASEAN-Australia-New Zealand Free Trade Agreement, Annex III, *open for signature*, Sept. 16, 2001, <http://www.asean.fta.govt.nz/assets/Downloads/AANZFTA-Australia-Services-Schedule.pdf>; ASEAN-China Free Trade Agreement on Trade in Services, Schedules of Specific Commitments (For the Second Package of Commitments, 2011), Feb. 1, 2007, AC-TIS/SC2.

¹² See generally ASEAN Agreement on the Movement of Natural Persons, Nov. 19, 2012, <http://cil.nus.edu.sg/rp/pdf/2012%20ASEAN%20Agreement%20on%20the%20Movement%20of%20Natural%20Persons-pdf.pdf>.

¹³ For example, Myanmar is amending the Bar Council Act, which establishes the regulatory framework for the legal industry. See Brigid O. Gorman, *Firm Opportunities in Myanmar*, LAWYERS WEEKLY (May 30, 2013) <http://www.lawyersweekly.com.au/news/firm-opportunities-in-myanmar>.

¹⁴ 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES, art. XII, sec. 14.

¹⁵ 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES, art. VIII, sec. 5.5.

¹⁶ See H. Harry Roque Jr., Globalization of Legal Services: Challenges and Possibilities in the Philippines Setting 55, 63-64, *presented at* The 8th ASEAN Law Association General Assembly in Singapore in 2003 (Nov. 29 - Dec. 2, 2003), http://www.aseanlawassociation.org/docs/w2_phil.pdf.

local law by narrowly construing the “legal document services” commitments.¹⁷ Albeit unsuccessful, these efforts demonstrate the protectionist nature of the legal industry. Thirdly, with respect to allowing the establishment of foreign law firm branches, Indonesia, Malaysia, and the Philippines have the most restrictive regulatory regimes in ASEAN. Mode 3 (commercial presence) legal services commitments incorporate various restrictions. Examples include Malaysia’s limitations of foreign law firms’ services provision to corporations incorporated in Labuan, the country’s offshore financial hub.¹⁸ Lastly, the legal services commitments under the AFAS and ASEAN FTAs with Korea, China and Australia-New Zealand are almost identical. This means ASEAN countries did not accord more favorable treatment to legal services providers in ASEAN than those in non-ASEAN countries, hence jeopardizing the opportunity to cultivate ASEAN-based lawyers and law firms.

The above issues demonstrate the weaknesses of ASEAN’s legal services liberalization. As ASEAN’s law ministers and legal communities aim to push for progressive liberalization for the legal sector, in line with the AEC’s goal, ASEAN states have looked at Singapore as a positive example. At an international level, the economy and the legal industry of Singapore is undeniably distinguishable from that of other countries. Yet, Singapore’s incremental approach for opening the legal market under FTAs and self-initiated FTA-plus liberalization efforts provide useful insight. Additionally, a substantial part of the work of Singapore-based foreign law firms concentrates on ASEAN cross-border transactions. This “ASEAN law” nature makes it easier for other ASEAN countries to replicate Singapore’s experience of attracting international law firms.

III. THE SINGAPORE EXPERIMENT

As an ASEAN member, Singapore has substantially liberalized its legal industry in the past decade. The country made legal services commitments under its bilateral FTAs with Japan, Australia, and the United States.¹⁹ Since 2007, the number of foreign lawyers increased by 42%, with

¹⁷ See generally Trade Policy Review Body, *Trade policy review report by secretariat — Cambodia Revision*, WT/TPR/S/253/Rev.1 (Nov. 24, 2011); Elizabeth Broomhall, *Foreign Law Firms in Vietnam Face Pushback from Local Practices*, LEGALWEEK.COM (Dec. 7, 2012), http://www.legalweek.com/legal-week/news/2230173/foreign-law-firms-in-vietnam-face-pushback-from-local-practices?WT.rss_f=Home&WT.rss_a=Foreign+law+firms+in+Vietnam+face+pushback+from+local+practices. (discussing the amendment to the Law on Lawyers).

¹⁸ See generally Protocol to Implement the Eighth Package of Commitment under the ASEAN Framework Agreement on Services, Oct. 28, 2010, <http://cil.nus.edu.sg/rp/pdf/2010%20Protocol%20to%20Implement%20the%20Eighth%20Package%20of%20Commitments%20under%20the%20ASEAN%20Framework%20Agreement%20on%20Services-pdf.pdf>.

¹⁹ See Trade Policy Review Body, *Trade policy review report by the Secretariat — Singapore revision*, at 76-77, WT/TPR/S/267 (June 5, 2012) [hereinafter *Trade policy review — Singapore*

1,200 foreign lawyers working in over 100 foreign law firms, constituting one-fifth of the legal professionals in Singapore.²⁰ Moreover, having grown by 25% from 2008 to 2012, the value of Singapore's legal services industry amounts to more than S\$1.9 billion.²¹ During the same period, the number of cases before the Singapore International Arbitration Centre also increased from 99 to 235 cases.²² The liberalization of Singapore's legal market has transformed the island nation into the hub of ASEAN for international law firms, hence further contributing to the growth of Singapore's legal industry. This is largely due to the increasing number of multilateral enterprises that choose Singapore as the operations center for regional business, and also as a dispute resolution forum for transactions involving India and ASEAN countries. Top foreign law firms consequently prefer Singapore to be their headquarters for ASEAN law practices. Remarkably, despite the government's liberalization efforts and the competition from foreign law firms, local firms have become regionally competitive. As of 2012, 14 of the top 25 law firms in the country are Singaporean firms, and some even have extended branch offices to ASEAN and China.²³ Hence, in the process of liberalization, ASEAN countries have studied the Singaporean case with interest.

A. The Legal Framework for the Legal Profession

With a top-down approach, Singapore has significantly liberalized legal services since 2000. Three strategic reasons prompted Singapore's leaders in the legal profession, including the judicial branch, to initiate and continue such efforts. First, Singapore has strong potential to be Asia's "key legal services hub," given its central location in ASEAN.²⁴ Encouraging foreign law firms to use Singaporean law for arbitration and transactions will also showcase Singapore as an attractive dispute

revision].

²⁰ Elizabeth Broomhall, *Open Season — The Influx of Global Firms Making Their Mark in Singapore*, LEGALWEEK.COM (May 24, 2013) <http://www.legalweek.com/legal-week/analysis/2269459/open-season-the-influx-of-global-firms-making-their-mark-in-singapore>; Lok Vi Ming, *Speech for the Opening of the Legal Year 2013 and Welcome References for Chief Justice Sundaresh Menon*, LAW GAZETTE (Jan. 4, 2013), <http://www.lawgazette.com.sg/2013-01/644.htm>.

²¹ *Award of the Second Round of Qualifying Foreign Law Practice Licences*, MINISTRY OF LAW OF SINGAPORE GOVERNMENT (Feb. 19, 2013), <http://www.mlaw.gov.sg/news/press-releases/award-of-second-round-qflp-licences.html>.

²² *Id.* In Singapore, the International Arbitration Act governs international arbitration cases; See generally Locknie Hsu, *Public Policy Considerations in International Arbitration: Costs and Other Issues A View from Singapore*, 26(1) J. INT'L ARB. 101, 101-05 (2009).

²³ See *Singapore's Top 25 Firms 2012*, SINGAPORE BUSINESS REVIEW (Dec. 6, 2012), <http://sbr.com.sg/professional-serviceslegal/feature/singapores-top-25-law-firms-2012>.

²⁴ MINISTRY OF LAW OF SINGAPORE GOVERNMENT, REPORT OF THE COMMITTEE TO DEVELOP THE SINGAPORE LEGAL SECTOR — FINAL REPORT 69 (2007) [hereinafter 2007 Report].

resolution forum, thus making Singaporean law “exportable.”²⁵ Secondly, strengthening alliances between Singapore and international law firms will allow for the transfer of legal software and elevate the standing of the local legal profession. Furthermore, localizing foreign law firms will also help alleviate the legal brain drain situation in Singapore, where local lawyers are attracted to international law firms based in London or Hong Kong.²⁶ Finally, the increasing volume of offshore transactions brought in by foreign firms will expedite GDP growth, particularly in “banking, corporate finance and maritime industries.”²⁷

To minimize the impact on the local legal profession, Singapore has adopted an incremental liberalization approach by providing a “menu of options” on corporate forms for foreign law firms. Based on the scope of their legal practice, law firms in Singapore are divided into Singapore law practices (“SLPs”) and foreign law practices (“FLPs”). SLPs are local firms that focus primarily on Singapore law matters, whereas FLPs are foreign boutique firms or multilateral firms that specialize in offshore transactions. Prior to the amendment enacted in 2000, the LPA governed only SLPs.²⁸ FLPs were left out of the regulatory framework. Table 1 provides an overview of the current forms of Singapore’s foreign law firms and the areas in which they are allowed to practice.

²⁵ SECOND READING SPEECH ON LEGAL PROFESSION (AMENDMENT) BILL 2008 BY LAW MINISTER K SHANMUGAM (Aug. 26, 2008), <http://www.mlaw.gov.sg/news/parliamentary-speeches-and-responses/second-reading-speech-on-legal-profession-amendment-bill-2008-by-law-minister-k-shanmugam.html> [hereinafter *Shanmugam’s 2008 Speech*].

²⁶ 2007 Report, *supra* note 24, at 85; *Id.*

²⁷ *Shanmugam’s 2008 Speech*, *supra* note 25.

²⁸ See generally Steven Chong, Singapore’s Journey of Liberalisation [This article was presented at the International Bar Association 3rd Asia-Pacific Regional Forum Conference entitled “Liberalisation of Legal Services Freeing the Legal Landscape: Is South-East Asia Ready?], *presented at* International Bar Association 3rd Asia-Pacific Regional Forum Conference (Nov. 27, 2012),

<http://app.agc.gov.sg/DATA/0/Docs/NewsFiles/Speech%20by%20AG%20at%20IBA%203rd%20Asia%20Pacific%20Regional%20Conference.pdf>.

Table 1: Overview of Foreign Law Firms in Singapore²⁹

	Licensed Foreign Law Practices, FLP	Representative Office, RO	Formal Law Alliance, FLA	Joint Law Venture, JLV	Qualifying Foreign Law Practice, QFLP
Areas of Practice	Not allowed to practice Singapore law, except for arbitration matters through Singapore-qualified lawyers	Liaison or promotional work only	The constituent FLP cannot practice Singapore law	Permitted areas of legal practice only; the constituent FLP cannot practice Singapore law	Permitted areas of legal practice only
Number of Law Firms	114	4	5	7	10

²⁹ See generally Legal Profession (International Services) Rules 2008, parts II-VII; List of Foreign Law Practices Registered with the Attorney-General's Chambers (as of 1 November 2012) (on file with author); List of Representative Offices Registered with the Attorney-General's Chambers (as of 1 November 2012) (on file with author); Broomhall, *supra* note 20.

1. *Representative Offices and Foreign Law Practices.* — The amendments to the LPA in 2000 required all foreign lawyers and law firms to register. The Legal Profession (International Services) Secretariat was created under the Attorney-General's Chambers to be the regulatory institution for registration matters.³⁰ Under the current legal framework, the possibility of foreign law firms to establish ROs in Singapore allows for boutique firms to test the waters in the region in a cost-effective way. The one-year RO license, which only permits marketing work, can be extended until a foreign law firm decides to set up an FLP.³¹ The RO concept under Singaporean law is distinguishable from the ROs in other Asian countries, such as China and Korea. The ROs in these countries are allowed to practice foreign law, whereas the ROs in Singapore are prohibited from engaging in any legal practice.

Instead of setting up an RO, most international law firms enter Singapore's legal market as a Foreign Law Practice. Although FLPs are the most common form of foreign law firms, there are three oft-ignored issues. First of all, Singapore-qualified lawyers are not prohibited from joining FLPs, although the scope of their legal practice is confined to what FLPs can do. Also, FLPs are limited to the practice of non-Singaporean law. In cases of arbitration where Singaporean laws are in dispute, Singaporean lawyers in FLPs may handle such matters.³² On the surface, being a JLV, FLA, or QFLP provides an incentive to practice Singaporean law. Nonetheless, this incentive has not persuaded many FLPs to transform their status. This is not due to the complexity of the application process, but to the absence of the need to recruit Singaporean lawyers in offshore transactions.

2. *Formal Law Alliances and Joint Law Ventures.* — The noteworthy regulatory change to the LPA in 2000 was the introduction of Formal Law Alliances and Joint Law Ventures. The two options allow a Singaporean and a foreign law firm to function as a "single service provider" by "sharing office premises, profits or client information."³³ Both firms in an FLA or a JLV are required to possess legal expertise in areas such as banking, finance, and corporate laws.³⁴ This allows the SLP to receive cutting-edge experience from the partner FLP. There are two key

³⁰ Jeffrey Chan Wah Teck, S.C., *Liberalization of the Singapore Legal Sector, present at 10th General Assembly of ASEAN Law Association* (2009), <http://www.aseanlawassociation.org/10GAdocs/Singapore3.pdf>.

³¹ LEGAL PROFESSION (INTERNATIONAL SERVICES) RULES 2008, rule 17 (Sing.); FEES AND PAYMENTS (Mar. 12, 2013), http://app.agc.gov.sg/What_We_Do/Legal_Profession_Secretariat/Fees_and_Payments.aspx.

³² LEGAL PROFESSION (INTERNATIONAL SERVICES) RULES 2008, rule 11(1) (Sing.).

³³ LEGAL PROFESSION ACT (CH. 161), arts. 130B(7), 130C(7) (Sing.); LEGAL PROFESSION (INTERNATIONAL SERVICES) RULES 2008, rules 5, 9 (Sing.).

³⁴ LEGAL PROFESSION (INTERNATIONAL SERVICES) RULES 2008, rules 4(2)(a), 8(1)(a) (Sing.).

differences between an FLA and a JLV. First, an FLA permits two freestanding firms to work together without cross-ownership. Additionally, the co-existence of the two firms does not create a new legal entity. For instance, Incisive Law LLC and Ince & Co operate as one firm for branding purposes.³⁵ In fact, Ince & Co is a UK-based international law firm and registers as an FLP in Singapore. Incisive Law LLC is an SLP, which formed an FLA with Ince & Co.³⁶ Lawyers in the two firms share the same premises and directors from both firms attend each other's board meetings.³⁷

Different from an FLA, a JLV is a company set up and jointly owned by Singaporean and foreign law firms.³⁸ A JLV license only allows the firm to engage in the "permitted areas of legal practice," which is commonly understood as commercial law.³⁹ Singaporean lawyers in a JLV are excluded from practicing certain areas of law such as constitutional law, criminal law, family law and court proceedings.⁴⁰ One pragmatic obstacle of the "permitted areas of legal practice" restriction is the cost efficiency involving arbitration matters. In a case where the opposing side challenges the finality of an arbitral award in court, a lawyer in the FLP of the JLV dealing with the bulk of arbitration, even if Singapore-qualified, has to transfer the case to a Singaporean lawyer in the SLP of the JLV.⁴¹

B. Self-initiated FTA-plus Liberalization

Since Singapore's initial liberalization of the legal sector, FTAs have engendered the next wave of liberalization efforts. Among Singapore's 19 FTAs, only three of them include legal services.⁴² The impact of the Japan-Singapore Economic Partnership Agreement on the legal profession has been minimal.⁴³ The Singapore-Australia Free Trade Agreement ("SAFTA") and the US-Singapore Free Trade Agreement ("USSFTA"), which came into effect in 2003 and 2004, respectively, were far more influential.⁴⁴

³⁵ Interview with a UK lawyer (name withheld), (June 6, 2013).

³⁶ *Id.*

³⁷ *Id.*

³⁸ LEGAL PROFESSION ACT (CH. 161), art. 130B(9) (Sing.).

³⁹ LEGAL PROFESSION ACT (CH. 161), art. 130A(1) (Sing.); LEGAL PROFESSION (INTERNATIONAL SERVICES) RULES 2008, rule 3 (Sing.).

⁴⁰ LEGAL PROFESSION (INTERNATIONAL SERVICES) RULES 2008, rule 3 (Sing.).

⁴¹ Interview with a UK Lawyer, *supra* note 35.

⁴² For the list of Singapore free trade agreements (FTAs), see SINGAPORE FTAS, http://www.fta.gov.sg/sg_fta.asp (last visited Aug. 17, 2013); *Trade policy review — Singapore revision*, *supra* note 19, at 76 Table IV.10.

⁴³ The Japan-Singapore Economic Partnership Agreement, Japan-Singapore, Annex IV C: Singapore's Schedule of Specific Commitments, at 432, Jan. 13, 2002.

⁴⁴ *Trade policy review — Singapore revision*, *supra* note 19, at 76, Table IV.10.

The common features of the SAFTA and the USSFTA are that both accorded preferential treatment to Australian and US law firms. The conditions for establishing FLAs and JLVs were eased by reducing the number of resident Australian and US equity partners and foreign lawyers, as well as the years of their aggregate experience.⁴⁵ Furthermore, both FTAs involved recognition of law degrees. Such recognition may affect approximately 360 law students who graduate from National University of Singapore (“NUS”) and Singapore Management University (“SMU”) every year.⁴⁶ US-trained Singaporean citizens and permanent residents (“PRs”) will benefit from the USSFTA, as their Juris Doctor degrees conferred by Harvard, Columbia, Michigan, and New York University are regarded as “local degrees” for the purpose of admission to the Singapore bar.⁴⁷ The SAFTA went further. It not only allowed ten Australian law schools to provide qualifications to Singapore citizens and PRs, but also allowed Australian citizens who received law degrees from NUS to be qualified lawyers in Singapore.⁴⁸

1. *The Enhanced JLV Scheme.* — The JLV model has been the core of Singapore’s liberalization efforts under the LPA and FTAs. To enhance foreign law firms’ incentives to form JLVs, the 2008 enhanced JLV scheme allowed the constituent FLP of a JLV to share 49% of the profits of its constituent SLP.⁴⁹ The 2012 enhanced framework further increased profit-sharing to the one-third cap on the profits of the entire JLV in permitted areas of cooperation.⁵⁰ Allens Arthur Robinson became Australia’s first JLV with Singapore’s TSMP Law Corporation under the SAFTA.⁵¹ US-based Baker & McKenzie and Duane Morris also set up JLVs.⁵²

⁴⁵ The conditions were modified as follows: three Australian/US lawyers, with an aggregate experience of 15 years, at least two of whom should be equity partners or directors based in Singapore. Attorney General’s Chambers in Singapore, *Guidance Note for Applicants – Formal Law Alliances* (Legal Profession Secretariat in Singapore, LPS/FLA/1/2012, 2012), at 2, n. 3 (2012). Attorney General’s Chambers in Singapore, *Guidance Note for Applicants – Joint Law Ventures* (Legal Profession Secretariat in Singapore, LPS/JLV/1/2012, 2012), at 2, n. 3.

⁴⁶ Hong Yanci, *Liberalisation and the Lawyer-to-Be*, S’PORE L. REV. JURIS ILLUMINAE (Feb. 14, 2011).

⁴⁷ Letter from George Yeo Minister, Ministry of Trade and Industry (Singapore) to Robert B. Zoellick, Ambassador, United States Trade Representative (May 6, 2003), http://www.fta.gov.sg/ussfta/fta_ussfta_agreement_side_letter_ls.pdf; EUL-SOO PANG, THE U.S.-SINGAPORE FREE TRADE AGREEMENT: AN AMERICAN PERSPECTIVE ON POWER, TRADE, AND SECURITY IN THE ASIA PACIFIC 85 (2011).

⁴⁸ Singapore-Australia Free Trade Agreement, Annex 4-III(II): Recognition of Law Degrees for Admission as Qualified Lawyers (2003).

⁴⁹ Steven Chong, *supra* note 28, at 9.

⁵⁰ *Allowing Singapore Law Practices More Flexibility to Grow and Enhance International Competitiveness*, MINISTRY OF LAW OF SINGAPORE GOVERNMENT (May 31, 2012), <http://www.mlaw.gov.sg/news/press-releases/allowing-singapore-law-practices-more-flexibility-to-grow-and-enhance-international-competitiveness.html>.

⁵¹ Azadeh Khalilizadeh, *First Australian Law Firms Ties Knot with Singapore under Joint Law Venture*, FINDLAW, <http://www.findlaw.com.au/articles/2204/first-australian-law-firm-ties-knot>

Beyond the surface of the presumable success, it is important for ASEAN countries to note that, in fact, most JLVs in Singapore failed. JLVs that involved US firms lasted the shortest amount of time. The profit-sharing issue, which the Singapore legislation seeks to remedy, is only the tip of the iceberg. The alignment of management culture and competing financial interests constitute a more complex dilemma. For instance, an SLP of a JLV usually has a long-standing client relationship with DBS Bank or SingTel. Difficulties arise in cases where the JLV's foreign law firm partner wishes to represent foreign banks or telecommunication companies that potentially compete with the Singaporean law firm clients. This conflict of interest often results in a prospective financial loss for either the Singapore law firm or its foreign partner, thus creating tension between the two. This dilemma explains why the number of foreign law firms currently operating through JLVs and FLAs in Singapore remains a single-digit number.

Only two situations provide for long-lasting JLVs. Hogan Lovells Lee & Lee represents the first model, in which the practice strengths and the expertise of the two constituents complement each other.⁵³ Hogan Lovells specializes in project finance and offshore M&As, whereas Lee & Lee focuses on stock exchanges and employment law.⁵⁴ The second model is Baker & McKenzie.Wong & Leow. These two constituent firms are not competing because Baker & McKenzie "created" the Singapore entity of Wong & Leow in order to meet the JLV requirement.⁵⁵ A similar arrangement can also be found in FLAs. Such a practice contravenes the law's intention to facilitate the cooperation of two established Singaporean and foreign law firms with "relevant legal expertise and experience" at the institutional and individual levels.⁵⁶ The law was designed to prevent an "Alibaba arrangement" under which a large international law firm enters the legal market through a small Singapore proxy.⁵⁷ The JLV and FLA practice proves the misuse of the current legal framework.

2. *Qualifying Foreign Law Practices.* — Despite the gap between the law and the actual practice, it is premature to summarize Singapore's FLA/JLV experience as a failed experiment. In order to rectify the problem, Singapore introduced QFLP licenses in 2008, which allows foreign law

with-singapore.aspx (last visited Aug. 17, 2013).

⁵² Andrea Tan, *DLA, Jones Day, K&L Gats Bid for Singapore Law Licenses*, BLOOMBERG LAW (Aug. 30, 2012), <http://about.bloomberglaw.com/legal-news/dla-jones-day-kl-gates-bid-for-singapore-law-licenses/>.

⁵³ Interview with a UK lawyer, *supra* note 35.

⁵⁴ *Id.*

⁵⁵ Jayanth K. Krishnan, *The Joint Law Venture: A Pilot Study*, 28(2) BERKELEY J. INT'L L. 431, 449 (2010); Alice Gartland, *Singapore Rising: Licensed to Thrill*, LEGALWEEK.COM (July 6, 2012), <http://www.legalweek.com/legal-week/feature/2189476/singapore-rising-licensed-thrill>.

⁵⁶ LEGAL PROFESSION (INTERNATIONAL SERVICES) RULES 2008, rules 4(2), 8(1) (Sing.).

⁵⁷ Interview with a Singapore lawyer (name withheld), (May 1, 2013).

firms to practice permitted areas of Singaporean law.⁵⁸ Such liberalization can be seen as a self-initiated FTA-plus commitment. Unlike foreign law firms in FLAs and JLVs, QFLPs are capable of practicing Singapore commercial law without local partners. Furthermore, a QFLP commits to growth in the “value of offshore work” that it generates and the “number of lawyers” it has based in Singapore.⁵⁹ The five-year QFLP licenses are deemed to hold a prestigious status, as the firms are selected by an evaluation committee and a selection committee composed of various ministers.⁶⁰ Only six of 20 law firms in 2008 and four of 23 law firms in 2013 received QFLPs.⁶¹ The QFLP scheme may have induced international law firms to break up its JLVs. For example, Linklaters terminated its two-decade JLV with A&G in 2012 and functions as a QFLP beginning in 2013.⁶²

The QFLP scheme provides an incentive for international law firms to grow their region-based business in Singapore. Remarkably, the first six QFLPs chalked up more than S\$170 million from offshore transactions.⁶³ Two main reasons exist for applying for QFLPs. One is cost efficiency. It is true that most FLPs that traditionally focus on project finance and offshore M&As do not need Singapore law capabilities. However, with the increasing number of transactions that involve foreign enterprises’ buyout of listed companies on the Singapore Exchange, international law firms will need Singapore law expertise to provide legal services to both foreign holding companies and Singaporean companies.⁶⁴ Having such a capability will also reduce the need to retain local firms, thus lowering legal costs. The other reason is perception. The awarding of selective QFLPs made relatively new international firms that have not been domestically active “prominent” in the Singapore legal market. In addition, prospective foreign clients may prefer QFLPs for Singapore or ASEAN-related transactions. Consequently, QFLP licenses allow foreign firms to more proactively pursue clients on account of their capability as “one-stop shop” legal service providers.

⁵⁸ *Award of the Second Round of Qualifying Foreign Law Practice Licences*, *supra* note 21.

⁵⁹ *Id.*

⁶⁰ *Id.*, see also Elizabeth Broomhall, *A&O, CC among Firms Pushing for Renewal of Singapore Law Licenses*, LEGALWEEK.COM (May 17, 2013), <http://www.legalweek.com/legal-week/news/2268315/a-o-cc-among-firms-pushing-for-qflp-renewal-as-licence-to-practise-singapore-law-draws-to-end>.

⁶¹ The 2008 Qualified Foreign Law Practices (QFLPs) included Allen & Overy, Clifford Chance, Herbert Smith, Latham & Watkins, Norton Rose, and White & Case; 2013 QFLPs included Sidley Austin, Linklaters, Jones Day, and Gibson, Dunn & Crutcher. See *Award of the Second Round of Qualifying Foreign Law Practice Licences*, *supra* note 21; *Award of Qualifying Foreign Law Practice (QFLP) Licenses*, SG PRESS CENTRE (Dec. 5, 2008), http://www.news.gov.sg/public/sgpc/en/media_releases/agencies/minlaw/press_release/P-20081205-1.

⁶² Alice Gartland, *supra* note 55.

⁶³ *Award of the Second Round of Qualifying Foreign Law Practice Licences*, *supra* note 21, n. 4.

⁶⁴ Interview with a US lawyer, *supra* note 35.

Based on Singapore's QFLP experience, below are recommendations for ASEAN countries. Malaysia may find the Singapore lesson particularly relevant, as it will soon adopt a similar QFLP concept in order to attract foreign law firms with international Islamic finance expertise.⁶⁵ First, one key motivation for devising the QFLP framework is to attract and keep local talent, thus allowing Singapore-trained lawyers to have exposure to world-standard legal practice. One of the QFLP selection criteria is the extent to which a firm expects to increase the number of Singaporean lawyers.⁶⁶ This criterion will likely lead to "distorted behavior", where applicant firms intentionally "inflate" the number of Singaporean lawyers.⁶⁷ Contrary to expectations, the statistics of law firms that received QFLP licenses in 2008 demonstrate a very low increment of Singaporean lawyers.⁶⁸ Not to mention that many of them are qualified in other jurisdictions, such as the US or the UK. Herbert Smith Freehills exemplifies this practice.⁶⁹ In its 41-lawyer Singapore office, only four lawyers are locally qualified.⁷⁰ ASEAN countries should also be cautioned that focusing too much on the criterion of Singaporean lawyers will cannibalize the recruiting of local firms. It may prompt international law firms to adopt a dual salary structure in order to make up the required numbers, hence compelling local lawyers to be second-class practitioners in the firms.

Moreover, one potential loophole of the QFLPs is the possibility to form a JLV or an FLA with local firms. One incentive for QFLPs to do so is to offer full-scale arbitration services. Although a QFLP by itself can only engage in certain areas, such as international arbitration, the FLA local firm partner is capable of litigating Singaporean-law matters in courts. The first and by far the only example is Clifford Chance, which is a QFLP that established an FLA with a Singapore law firm, Cavenagh Law.⁷¹ This boutique dispute resolution-focused Singapore firm was set up by three partners, all of whom were associated with Clifford Chance's previous JLV partner, WongPartnersip.⁷² The approval of the Clifford Chance FLA demonstrates a two-facet Alibaba arrangement problem. A QFLP can easily circumvent the permitted areas of Singaporean law restrictions by launching a small Singapore law firm. Moreover, this mechanism

⁶⁵ LIBERALIZING LEGAL SERVICES SECTOR – DOES IT MATTER? PART 1 (Mar. 27, 2013), <http://www.businesscircle.com.my/liberalising-legal-services-sector-does-it-matter/>.

⁶⁶ Interview with a UK lawyer (name withheld), (June 28, 2013).

⁶⁷ *Id.*

⁶⁸ Jessica Seah, *Have QFLPs Worked for Singapore?*, LAW.COM (May 21, 2012), <http://www.law.com/jsp/article.jsp?id=1202555185632&slreturn=20130612212611>.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Jessica Seah, *Clifford Chance Launches Singapore Alliance*, LAW.COM (Dec. 12, 2012), <http://www.law.com/jsp/article.jsp?id=1202581120149>.

⁷² *Id.*

undermines the incentive for QFLP applications. Without going through a more costly and burdensome QFLP process, a foreign law firm can achieve the purpose of practicing Singapore law via forming a JLV or FLA with an artificial Singapore entity. Ironically, the scope of the permitted legal practice of this alliance is even wider than that of a QFLP. These issues illustrate examples for further improvement and may serve as reference for other ASEAN countries.

3. *The Admission of Foreign Lawyers.* — To further booster its FTA-plus liberalization efforts for foreign law firms, Singapore amended its legal profession rules to accommodate foreign lawyers to suit the prospective growth of their firms. As previously discussed, the SAFTA and the USSTA incorporated the recognition of Australian and US law degrees. An increasing number of dual-qualified Singaporean lawyers are anticipated to enter the legal market, as they are eligible to sit for the bar exam in both jurisdictions. Because JLVs and QFLPs are allowed to practice in the “permitted areas” of Singaporean law, their demand for commercial and financial lawyers will certainly increase.⁷³ In order to meet such a demand, Singapore launched the Foreign Practitioners Examination (“FPE”) in 2012 and enabled foreign lawyers who passed the exam to practice in those “permitted areas.”⁷⁴ The FPE is distinguishable from the bar examination in New York State, which is one of the jurisdictions most open to foreign lawyers. FPE eligibility does not require an education from Singaporean law schools.⁷⁵ Moreover, the FPE is only open to foreign lawyers who have three years of experience and are currently working at, or have received job offers from, JLVs, QFLPs or FLPs.⁷⁶

In addition to the FPE, the 2012 amendments to the LPA regarding the admission of Queen’s Counsels (“QCs”), recognized senior barristers in common law jurisdictions, will impact the legal profession. The deletion of the “sufficient difficulty and complexity” requirement from the LPA accords the court greater discretion to determine the ad hoc admission of QCs.⁷⁷ The most recent Singapore High Court cases, *Re Andrews Geraldine Mary QC* and *Re Caplan Jonathan Michael*, demonstrate the Court’s position under the new LPA.⁷⁸ In the Court’s view, the amendments to the LPA by no means constitutes a “free for all” and the

⁷³ LEGAL SERVICES, http://www.contactsingapore.sg/key_industries/legal_services/ (last visited Aug. 17, 2013).

⁷⁴ *Id.*

⁷⁵ For information on the New York bar exam requirements, see BAR EXAM ELIGIBILITY, <http://www.nybarexam.org/Eligible/Eligibility.htm#F> (last visited Aug. 17, 2013).

⁷⁶ LEGAL PROFESSION ACT (CHAPTER 161), LEGAL PROFESSION (FOREIGN PRACTITIONERS EXAMINATIONS) RULES 2011, rule 4.4(3)(f).

⁷⁷ LEGAL PROFESSION (AMENDMENT) BILL, 2012, Amendment of section 15, sec. 4(a).

⁷⁸ See generally *Re Andrews Geraldine May QC*, [2013] 1 SLR 871; *Re Caplan Jonathan Michael QC*, [2013] SGHC 75.

admission of foreign senior counsels should be limited to an “exceptional case.”⁷⁹ One of the important factors that the Court considered is the availability of appropriate lawyers or “any Senior Counsel,” Singapore’s equivalent of a QC.⁸⁰ Despite the Court’s cautious interpretation, the more liberalized regime will likely increase the use of foreign counsels in both court proceedings and international arbitration.

IV. CONCLUSION

This article discussed ASEAN’s current state of liberalization in the legal sector in law and in practice. The AEC’s goal to be a “single market and production base” can be significantly strengthened by the liberalization of legal services. Devising a legal regime that facilitates the establishment of law firms and a movement of legal professionals across the ASEAN region will be critical for the bloc. Despite the ASEAN countries’ legal services commitments made under the AFAS and ASEAN FTAs with China, Korea, and Australia-New Zealand, the article challenged the weaknesses of the implementation of such commitments at the national level.

As an ASEAN member, Singapore has considerably liberalized the legal services sector by providing a “menu of options” for corporate forms of foreign law firms and for foreign lawyers. Notably, Singapore’s liberalization was expedited after the conclusion of the SAFTA and the USSFTA by offering the enhanced JLV scheme and QFLPs, and allowing for the admission of foreign counsels such as QCs in Singapore courts. While Singapore may serve as a reference for ASEAN countries, this article analyzed the Singapore experiment and identified a gap between the legislation and the practice of foreign law firms. In particular, a significant failure rate of FLAs and JLVs indicates that such an alliance does not provide a sustainable incentive to attract foreign law firms. While JLVs and QFLPs limit the practice to permitted areas of local law, the Singapore mechanism does not prevent law firms from circumventing the prohibition by making an Alibaba arrangement. Furthermore, the QFLP selection criteria should be more holistic, and their increase in Singaporean lawyers should be assessed both qualitatively and quantitatively. These issues in the Singaporean experiment on the regulations on foreign law firms and lawyers will provide insightful lessons for ASEAN countries. The incremental implementation of the legal services liberalization will in turn

⁷⁹ See *Re Andrews Geraldine May QC*, at ¶ 44; *Re Caplan Jonathan Michael QC*, at ¶¶ 54, 75.

⁸⁰ In both cases, the High Court considered the four factors in paragraph 3 of the Legal Profession (Ad Hoc Admissions) Notification 2012.

accelerate the goal of ASEAN economic integration as a “single market and production base.”

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