COMMITTEE TO REVIEW THE REGULATORY FRAMEWORK OF THE SINGAPORE LEGAL SERVICES SECTOR

FINAL REPORT

JANUARY 2014

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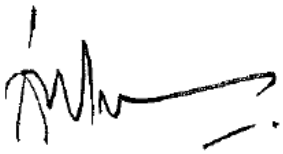
The Committee is pleased to submit this Final Report for consideration.

Dated this 13th day of January 2014.

Chief Justice Sundaresh Menon
(Chairperson)

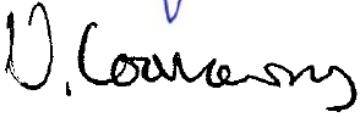


Justice Chao Hick Tin
(Vice Chairperson)

PS(Law) Beh Swan Gin
(Vice Chairperson)

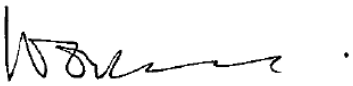
Attorney-General Steven Chong

Justice Vinodh Coomaraswamy



JC Lee Kim Shin

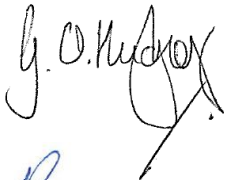
Mr Wong Meng Meng SC



Mr Chua Eu Jin

Mr Kenneth Aboud

Mr Geraint Hughes



Mr John Savage

Mr Kevin Wong

Mr Ben Giaretta

GLOSSARY OF TERMS

Term	*Definition*
ABS	Alternative Business Structures.
ACRA	Accounting and Corporate Regulatory Authority.
AG	Attorney-General.
AGC	Attorney-General's Chambers.
Australian Model Bill	The National Legal Profession Model Bill, introduced by Australia's Standing Committee of Attorneys-General in 2004 and released again with slight modifications in February 2007. The Australian Model Bill was aimed at harmonising the laws across jurisdictions and, save for minor deviations in areas such as admission and practising certificates, costs assessment and disclosure and complaints handling and discipline, its provisions have been adopted by all States and Territories except South Australia.
Committee	Committee to Review the Regulatory Framework of the Singapore Legal Services Sector.
FL	Foreign lawyer. An individual who is duly authorised or registered to practise law in a state or territory other than Singapore by a foreign authority having the function conferred by law of authorising or registering persons to practise law in that state or territory, as defined in section 2 of the LPA.
FLA	Formal Law Alliance licensed under section 130C of the LPA.
FLP	Foreign law practice. A law practice (including a sole proprietorship, a partnership or a body corporate, whether with or without limited liability) providing legal services in any foreign law in Singapore or elsewhere, but does not include a Singapore law practice.
FPC	Foreign Practitioner Certificate. A certificate issued by the AG in respect of the registration of an FL under section 130I of the LPA.
FPE	Foreign Practitioner Examination. FLs who pass the FPE can apply for an FPC.
ILP	Incorporated Legal Practice.
JLV	Joint Law Venture licensed under section 130B of the LPA.
Law Society	Law Society of Singapore established under section 37 of the LPA.
LDP	Legal Disciplinary Practice.

Term	*Definition*
Licensed FLP	An FLP licensed under section 130E of the LPA.
LLC	Law corporation approved under section 81B of the LPA.
LLP	Limited liability law partnership approved under section 81Q of the LPA.
LPA	Singapore Legal Profession Act (Cap. 161).
LPA (NSW)	New South Wales Legal Profession Act 2004. The LPA (NSW) is based on the Australian Model Bill, whose provisions have been adopted by all States and Territories except South Australia. The regulatory framework applicable to New South Wales is thus representative, save for minor deviations (see Australian Model Bill) of the framework applied across all the Australian States and Territories except South Australia.
LPIS Rules	Singapore Legal Profession (International Services) Rules 2008 (Cap. 161, S 481/2008).
LPS	Legal Profession Secretariat.
LSA (UK)	United Kingdom Legal Services Act 2007 (c. 29). The LSA (UK) is generally only applicable to England and Wales.
MDP	Multi-Disciplinary Practice.
MinLaw	Ministry of Law, Singapore.
PC	Practising certificate issued by the Registrar of the Supreme Court under section 25 of the LPA.
PCR	Singapore Legal Profession (Professional Conduct) Rules (Cap. 161, R 1).
QFLP	Qualifying Foreign Law Practice licensed under section 130D of the LPA.
RO	Representative office. An office set up in Singapore by an FLP to carry out only liaison or promotional work for the FLP, without providing legal services in Singapore or conducting any other business activities.
SAL	Singapore Academy of Law.
SILE	Singapore Institute of Legal Education.
SL	Singapore lawyer. An advocate and solicitor of the Supreme Court as defined in section 2 of the LPA which provides that, *"advocate" and*

Term	*Definition*
	"solicitor" mean an advocate and solicitor of the Supreme Court.
SLP	Singapore Law Practice. (1) The practice of an SL who practises on his own account; (2) a firm of SLs; (3) an LLP; or (4) an LLC.
Supreme Court	Supreme Court of Singapore.

Contents

SECTION 1 – INTRODUCTION

1. In 1912, the Singapore legal services sector comprised 50 lawyers and 17 law practices. Today, this sector comprises around 5260 SLs and FLs[1] and 950 SLPs and FLPs.

2. The increasingly international nature of legal practice, coupled with a greater intersection of both SLs and FLs of different backgrounds in the local legal landscape, has resulted in a blurring of the traditional lines between members of the onshore and offshore bar. Law practices have also modernised with the times and begun to innovate and adopt different business models and structures.

3. These developments pose various challenges to Singapore's current system for regulation of lawyers and law practices, which were premised upon traditional notions of the practice of law and the law practice. The complexity of the current paradigm and the challenges it presents to the existing regulatory framework can be summarised as follows.

4. *Liberalisation of practice of Singapore law.* SLs working within foreign vehicles such as QFLPs and JLVs are now allowed to retain their Singapore PCs and practise Singapore law in "permitted areas of legal practice"[2]. FLs who satisfy certain eligibility criteria may sit for an FPE and obtain an FPC to practise Singapore law in an SLP, QFLP or JLV in the same "permitted areas of legal practice". The practice of international commercial arbitration in Singapore has been liberalised, with all licensed FLPs able to employ PC and FPC holders to practise Singapore law in the context of agreements involving international commercial arbitration.

5. *Multiple practice jurisdictions.* The FL population now forms approximately 20% of Singapore's total lawyer population of around 5260 lawyers but SLs and FLs do not have the same disciplinary processes or regulators. Secondly, the division in the permitted practice areas of Singapore law for SLs and FLs in SLPs and foreign entities (whether Licensed FLP, QFLP or JLV) has become increasingly opaque with the increasingly cross-jurisdictional nature of commercial practice involving the practice of foreign laws by both SLs and FLs. But SLPs and FLPs also do not have a single consistent regulator. This leads to the question of whether one consolidated regulatory regime for all lawyers, as well as one consolidated regulatory regime for all law practices, can be applied to facilitate a more coherent and consistent regulatory approach.

6. *Increased importance of systemic discipline.* Given the shift to greater corporatisation, systemic discipline now plays an increasingly important role in ensuring compliance with professional standards in the areas of (i) maintaining and handling of client money and accounts; (ii) dealing with conflicts; and (iii) client confidentiality. This leads to the attendant question of whether lawyers

[1] As of June 2013, there were 1054 FLs who practised foreign law in Singapore, and 4202 Singapore PC holders.
[2] Defined in Rule 3 of the LPIS Rules.

who take on management roles should have the responsibility of ensuring that their law practice as a whole maintains adequate systems to deal with these three areas of professional conduct.

7. *Variety of practice vehicles*. Liberalisation has also occurred at the entity level. Changes to the LPA have allowed SLPs to organise as LLPs and LLCs. SLPs have also been allowed to enter into profit and equity-sharing arrangements with FLs and FLPs. For foreign entities, liberalisation changes and measures have been introduced in recent years to allow such entities to participate in the practice of Singapore law to varying degrees, as Licensed FLPs or QFLPs, through JLVs and FLAs, or by taking an equity or profit stake in an SLP. The attendant question of whether there should be a more coherent and consistent regulatory approach at entity level similarly arises.

8. *The international legal landscape*. At the same time, developments in the global market place continue to drive or increase pressure for new approaches to be taken for the provision of legal services. In particular, Australia (New South Wales and Queensland) and the United Kingdom now allow law practices to conduct their practice through ABS models such as LDPs, MDPs and ILPs. Practices with ABS models have sought and been refused registration in Singapore. This opens up the attendant questions of whether, to what extent and at what pace we should similarly liberalise our system to allow such ABS models to provide legal services in Singapore; in particular, the regulatory rules and obligations that such ABS models should be subject to and how to modify the current regulatory framework such that it would be flexible enough to regulate such ABS models, if introduced.

9. *Singapore's place in the global economy*. Singapore's strategy to be an Asian hub for finance, business and other professional services requires a modern and progressive legal services sector, with a pro-business environment and a facilitative platform. As Singapore matures, it also requires a legal sector that is well-placed to meet domestic needs that are increasingly varied and complex. These trends provide a favourable context for the legal services sector to continue growing as a high-value[3] segment of the economy.

10. Taking into consideration the above, the Committee was established with the following terms of reference:

    a) Given the dynamic changes that have taken place within Singapore's legal sector in recent years since the introduction of the various liberalisation measures, to examine the current regulatory framework and professional standards applicable to both (i) individual local and foreign practitioners, as well as to (ii) the regulation of law practices,

[3] In 2011, our legal services industry contributed S$1.8 billion or 0.6% of Singapore's gross domestic product to the economy. Globally, the revenue of the legal services sector was about US$623.3 billion in 2011. Source of data: Abstract of MarketLine's *'Global Legal Services Report'* published on 21 November 2012. In the United Kingdom, legal services contributed £20.9 billion or 1.6% of the United Kingdom's gross domestic product in 2011: *'Professional Services Report – Legal Services Report 2013* from www.thecityuk.com published on 18 March 2013.

local or foreign, as entities. In particular, to consider whether greater consistency could be achieved between the disparate regulatory regime and professional standards governing FLs and SLs; and FLPs and SLPs.

b) To study developments in leading jurisdictions relating to ABS for law firms such as LDPs, MDPs and other non-traditional means of structuring and funding a law practice, with a view to assessing (i) how such structures will impact Singapore's legal landscape; and (ii) whether it would be desirable to allow law practices based in Singapore to adopt such structures and, if so, the relevant regulatory framework and safeguards that should be put in place.

11. The Committee sought a wide range of views[4] in coming to its conclusions, and thanks all who have contributed. In brief, the Committee's recommendations are as follows.

12. ***Registration and licensing of lawyers.***

12.1. ***SLs*** should continue to be on the roll of the Singapore Supreme Court. The annual PC system should remain as it is.

12.2. ***FLs*** should not be required to participate in the annual PC process and instead should be registered with the proposed Legal Services Regulatory Authority (the "LSRA") that will also take over the licensing and regulation of law firm entities (see paragraph 16 below).

13. ***Regulation of professional conduct.***

13.1. ***New Professional Conduct Rules.*** The current PCR should be reviewed and redrafted recognising that lawyers in Singapore are now operating largely in the context of an international environment ("new PCR").

13.2. ***Professional conduct rules of general application.*** The new PCR should apply to both SLs and FLs. It should provide for a clear delineation between general universally accepted principles and rules of conduct as to conduct befitting a member of the legal profession, and specific rules of professional conduct relevant only to those engaged in the practice of Singapore law or called to the Singapore Bar.

13.3. ***Professional conduct rules for management roles.*** Lawyers, whether SLs or FLs, who take on management roles within their law practices should have the professional responsibility of ensuring that their law practice as a whole maintains adequate systems to (i) handle client money and accounts; (ii) deal with conflicts; and (iii) maintain client

[4] The Committee conducted broad consultation with the legal fraternity through the circulation of a Consultation Brief in June 2012 setting out initial ideas for discussion, followed by townhall sessions with local and foreign lawyers organised with the assistance of the Law Society in November 2012. This final report takes into account the feedback obtained through the consultations.

confidentiality.

13.4. A specific section setting out the principles and rules governing such management responsibilities should be included in the new PCR. Failure by a firm's management group of lawyers to maintain adequate systems in the three areas outlined should be treated as a breach of the new PCR, and trigger disciplinary action in accordance with the usual discipline regime for SLs and FLs (proposed in paragraph 14 below).

13.5. ***Specific rules that govern the professional conduct of SLs, and FLs who practise Singapore law.*** Specific rules relating to the practice of Singapore law will apply only to SLs and FLs who practise Singapore law i.e. FPC holders. SLs called to the Singapore Bar may be liable for breach of specific professional conduct rules even if they were only practising foreign law at the material time. The differential position here is based on the premise that they are regulated as members of the Singapore Bar.

13.6. ***FLs.*** FLs who do not practise Singapore law will be exempt from the specific rules relevant only to SLs and FPC holders. Aside from this, an FL may also apply to a new Professional Conduct Council (see paragraph 13.7 below) for specific exemptions from any of the rules in the new PCR, if he anticipates that the rule in question may potentially conflict with his home jurisdiction's rules.

13.7. ***Bodies supporting and giving guidance on the PCR.*** The following bodies, each of which should have FL representation, would regulate the continued relevance and ease of use of the new PCR:

13.7.1. A Professional Conduct Council with senior representation from the Judiciary, the Law Society, AGC, SL and FL community, and MinLaw ("new PCC") should be formed to oversee the new PCR. Non-practitioner members such as a retired Judge or academic may also be invited to sit on the new PCC.

13.7.2. A Working Group ("new Working Group") nominated by the same agencies will periodically review and work out the detailed revisions to the new PCR.

13.7.3. An Advisory Committee ("new Advisory Committee") should be formed to give advice to lawyers on ethical issues. Both SLs and FLs will have the avenue of obtaining advice on ethical issues from the new Advisory Committee. Reliance on this advice could be either a mitigating factor or even an exculpatory factor in disciplinary proceedings against the lawyer in question.

14. ***A single discipline regime.*** The Supreme Court should have regulatory oversight over all SLs and FLs practising in Singapore:

14.1. All SLs will continue to be subject to the existing disciplinary process involving the Review Committee, Inquiry Committee and Disciplinary

Tribunal, and the Court of three Judges;

14.2. All FLs should be subject to the same disciplinary process as SLs except that when an FL is subject to disciplinary proceedings, one of the SL members or legal service officer members at every stage (i.e. the Review Committee, Inquiry Committee and Disciplinary Tribunal) will be replaced by an FL. Such FLs could be selected from a new Inquiry Panel of FLs to be appointed by the Chief Justice. The Chief Justice will also appoint FLs to sit on the Disciplinary Tribunal. For discipline of an FL:

14.2.1. The same grounds for the Law Society Council / Disciplinary Tribunal / Court of three Judges to exercise their powers of sanction against SLs would apply to FLs.

14.2.2. Analogous to SLs, FLs will be subject to penalty, censure, suspension or cancellation of their registration by the Court of three Judges. The Court of three Judges will also be able to report the matter and the outcome to the FL's home jurisdiction(s).

14.2.3. The general grounds for disciplinary sanction under section 83(2) of the LPA which apply to SLs should also apply to FLs. Thus, the effect of a criminal conviction will be the same for an FL as an SL. Like SLs, in any disciplinary proceedings against an FL consequent upon his conviction for a criminal offence, an Inquiry Committee, a Disciplinary Tribunal and the Court of three Judges shall accept his conviction as final and conclusive. Thus if an FL has defrauded anyone, their registration as an FL could be cancelled. Conduct that is grossly improper, or unbefitting of a member of an honourable profession, would also attract sanction.

14.2.4. As with SLs, situations where complaints are automatically directed to a Disciplinary Tribunal would equally apply to an FL. A complaint would only be so directed to the Disciplinary Tribunal where (i) the complaint is made by any Judge of the Supreme Court, the AG or the SILE; and (ii) the Judge, the AG or the SILE requests that the matter be referred to a Disciplinary Tribunal under section 85(3)(b) of the LPA. This could similarly lead to the FL's registration being cancelled.

15. ***Law Society & Singapore Academy of Law memberships.***

15.1. ***SLs.*** All SLs should continue to be full members of the Law Society and the SAL.

15.2. ***FLs.*** Consistent with the practice in other jurisdictions, it will not be mandatory for FLs who practise only foreign law to join the Law Society or the SAL, but they are encouraged to do so on a voluntary basis. As such, a new category of "associate membership" with the Law Society, with rights and privileges consistent with jurisdictions elsewhere, should be introduced to replace the current "foreign practitioner membership" which

currently is limited to FLs holding the FPC (that allows them to practise Singapore law), and FLs who hold partnership / directorship positions and / who own shares / equity in SLPs[5].

15.3. As with present practice, "associate membership" with the Law Society and the SAL will remain mandatory for FLs holding the FPC and FLs who hold partnership / directorship positions and / who own shares / equity in SLPs.

16. ***A consistent approach to law firms, whether SLPs or FLPs, whether traditional partnerships, LLPs or LLCs.***

16.1. ***Single point for business entities.*** The disparate approval and licensing regimes currently applicable to law practices should be consolidated into a single regime, to be administered by the LSRA to be established under the oversight of MinLaw:

16.1.1. All law practices in Singapore will be licensed by the LSRA, whether SLP or FLP.

16.1.2. The LSRA will regulate business criteria such as names of law practices, and business criteria relevant to the different law practice structures.

16.1.3. Consistent with current practice, SLPs seeking to enter into collaborative arrangements involving foreign ownership, profit sharing or concurrent partnerships will need to obtain prior approval. To standardise requirements, the maximum caps relating to foreign ownership, profit sharing and SL to FL ratios currently applicable to such collaborative arrangements should apply across the board to all SLPs. The current criteria applicable to Licensed FLPs, QFLPs, JLVs and FLAs will remain unchanged.

16.1.4. It is also envisaged that for traditional SLPs, the existing licensing requirements will continue to be applicable as the intention is to avoid onerous cost burdens. For smooth transition into the new regime, existing law practices will be issued licences automatically, and the LSRA will work with ACRA, AGC's LPS and the Law Society to make it administratively less cumbersome for the setting up of law practices through establishing a 'one-stop shop'.

16.2. ***Differential regulation of business criteria and professional issues.*** The current distinction between business regulation and professional regulation should be maintained:

16.2.1. The Law Society will continue to exercise its powers of

[5] There are existing provisions under the SAL Act for the election of associate members.

intervention and maintain its disciplinary jurisdiction over professional conduct matters, with the ultimate oversight of the Supreme Court.

16.2.2. The LSRA, which sets and reviews the relevant business criteria, will assume the role of entity regulator. The LSRA should consult with the Law Society across the range of regulatory matters.

16.3. ***Enforcement and regulation of business criteria.*** The LSRA will have the power to investigate and sanction law practices for breach of the business criteria outlined in paragraphs 16.1.2 and 16.1.3. Opportunity would be given for law practices to make written representations. Appeals against the decisions of the LSRA will be decided by the Minister for Law.

17. ***A modern platform for a legal services sector that enhances Singapore's reputation as an Asian hub for finance and commerce.***

17.1. As a first step, LDPs (i.e. law firm entities providing only legal services) which allow employees within the firm who are not lawyers to take an equity stake should be sanctioned, with appropriate "suitability" and "fitness" tests for such ownerships, and with supervision. If further safeguards are deemed desirable, provision could be made for an inclusionary list of the categories of persons eligible to apply for approval.

17.2. For LDPs involving external investors, a separate set of stringent "suitability" and "fitness" tests and criteria should be devised. MinLaw will consult the legal profession on these issues to ensure adequate safeguards are in place.

17.3. For the present, MDPs (law firm entities providing both legal and non-legal services) and public listings will not be permitted, but MinLaw will continue to actively study the experience of jurisdictions that have allowed such structures to be established.

17.4. In the interim, MDPs and listed companies from the United Kingdom and Australia which wish to establish Singapore entities will be required to do so through one of the permitted structures.

18. ***A need for regular review.*** Some of the recommendations took into consideration the need for a calibrated pace for change, in light of the fact that we are moving from a very traditional platform. The regulatory landscape should be reviewed and discussed again in three years.

SECTION 2 - REGULATION OF LAWYERS IN SINGAPORE

19. Under the current framework, the disciplinary and regulatory regimes for SLs and FLs practising law in Singapore are bifurcated and dependent on whether the individual is an SL or FL, and whether the lawyer concerned is practising in an SLP or a foreign entity.

20. The current framework can be summarised as follows:

20.1. ***SLs practising in SLPs*** come under the regulation and discipline of the Law Society and the Supreme Court. Regulatory control is established through the annual issuance of PCs by the Supreme Court.

20.2. ***SLs practising in foreign entities*** (whether a Licensed FLP, QFLP or JLV) come under the:

20.2.1. Regulation and discipline of the AG in respect of their practice of foreign law; and

20.2.2. Concurrent regulation and discipline of the Law Society, Supreme Court and the AG, in respect of their practice of Singapore law, though the AG remains their primary regulator.

Regulatory control is established through registration with the AG under Part IXA of the LPA and the retention of PCs by SLs who practise Singapore law within foreign entities.

20.3. ***FLs, whether practising in SLPs or foreign entities*** (whether a Licensed FLP, QFLP or JLV), come under the:

20.3.1. Regulation and discipline of the AG in respect of their practice of foreign law; and

20.3.2. In the case of FLs who hold FPCs, concurrent regulation and discipline of the Law Society, Supreme Court and the AG, in respect of their practice of Singapore law, though the AG remains their primary regulator.

Regulatory control is established through registration with the AG under Part IXA of the LPA and the issuance of FPCs to FLs who practise Singapore law by the Supreme Court.

21. The Committee considered the ramifications of the current paradigm, with a view to proposing an enhanced framework for regulation of both SLs and FLs, and with a view to progressive integration of the legal fraternity. Various aspects were considered:

21.1. Registration of lawyers;

21.2. Professional standards applicable to lawyers;

21.3. Disciplinary framework for lawyers; and

21.4. Institutions and membership.

A. REGISTRATION OF LAWYERS

22. The Committee considered whether it was necessary to modify the current registration framework for lawyers described in paragraph 20 above, having regard to regimes in other jurisdictions such as England and Wales, Hong Kong, Australia, Canada, Germany and the United States where they generally have the same registration authority for both local and foreign lawyers.

23. In its deliberations, the Committee observed that in Singapore's context, separate systems had been developed for the licensing and registration of SLs and FLs respectively. For SLs, the maintenance of the roll of SLs called to the Singapore Bar and annual issuance of PCs is handled by the Supreme Court Registry, while for FLs, the maintenance of a register of FLs and issuance of certificates of registration is handled by AGC's LPS.

24. The Committee considered whether there might be some merit in consolidating the two systems into a single licensing and registration system for both SLs and FLs. After consultation with the legal fraternity, the Committee decided that these essentially administrative functions were served well by the current framework which users were familiar and comfortable with, and therefore need not be substantially overhauled.

Recommendations

25. The Committee recommends the following:

25.1. **Recommendation A1:** All SLs should continue to be on the roll of the Supreme Court. The PC system should remain as it is.

25.2. **Recommendation A2:** For FLs, their current point of registration is with AGC's LPS. For administrative efficacy and a dovetailing of functions, FLs who would not require the PC process should be registered with the proposed LSRA that will be established to take over the licensing and regulation of law firm entities from AGC's LPS (see Section 3). Registration of FLs by the LSRA can be managed along similar lines to what is currently exercised by AGC's LPS. FPC holders, currently registered with the LPS, will also be registered with the LSRA.

B. PROFESSIONAL STANDARDS APPLICABLE TO LAWYERS

B.1. Whether certain uniform standards should apply

26. The professional and ethical standards applicable to a lawyer practising in

Singapore depends on the "home jurisdiction" in which he has been called as an advocate and / or solicitor:

26.1. SLs are subject to various professional standards and ethics rules contained in Part VI of the LPA and in various pieces of subsidiary legislation made under Part VI, primarily the PCR.

26.2. FLs are not subject to these rules. Instead, an FL's professional conduct is governed by the professional standards and ethics rules of his home jurisdiction.

27. By contrast, in most other common law jurisdictions, an individual lawyer's professional conduct is regulated based on geography or base of practice, rather than on his "home jurisdiction". In the United Kingdom, the Principles and Code of Conduct promulgated by the Solicitors Regulation Authority ("SRA") apply to all solicitors, Registered European Lawyers and Registered Foreign Lawyers in relation to their activities carried out from an office in England and Wales.[6] Likewise, the rules of professional conduct apply to all solicitors within Australia, including Australian-registered foreign lawyers acting in the manner of a solicitor. Similar approaches are also taken in Hong Kong and Canada.

28. Maintaining a difference in the professional standards governing SLs and FLs is tenable only if there is a clearly defined separation between the work of SLPs and FLPs. However, with the liberalisation of the Singapore legal services sector and the opening up of Singapore as a legal services and arbitration hub for the region, Singapore's local paradigm has evolved significantly in the following areas:

28.1. At the individual level, SLs can now retain their PCs and practise Singapore law within foreign entities.[7] FLs can now apply to take the FPE conducted by the SILE, and can, on passing the FPE, apply to the AG to be registered under section 130I of the LPA and obtain an FPC to practise Singapore law in "permitted areas of legal practice".[8] Queen's Counsel and equivalent practitioners can be admitted to appear before Singapore Courts on an *ad hoc* basis under section 15 of the LPA.[9]

28.2. At the entity level, FLPs operating in Singapore can apply for a range of licences, and employ SLs and FLs holding FPCs to practise Singapore law to varying degrees. In this regard, Licensed FLPs can hire SLs and FLs holding FPCs to practise Singapore law in the limited context of agreements contemplating international commercial arbitration, while QFLPs and JLVs can hire SLs and FLs holding FPCs to practise Singapore law in "permitted areas of legal practice".

[6] As defined in the Glossary of the SRA Handbook.
[7] This policy change was implemented in 2008 together with the introduction of the QFLP scheme.
[8] The first FPE was conducted in 2012.
[9] Amendments were made to the LPA in 2012 to widen section 15 to accord the Courts more flexibility to accord *ad hoc* admission to Queen's Counsel on a case by case basis.

As such, the previous distinction between SLs and FLs is no longer clear and could, depending on area of practice, be non-existent.

29. Further, the current approach is based on the underlying assumption that a lawyer practising the law of a jurisdiction he is qualified to practise in, should be governed by the rules of that "home jurisdiction". In an increasingly mobile and inter-connected world, the traditional concept of a "home jurisdiction" has become increasingly artificial; it is not uncommon for a lawyer to practise outside of his "home jurisdiction", or for his practice to involve foreign law (i.e. laws of other jurisdictions outside of his "home jurisdiction"). Aside from this, it is also the case that in many instances, the "home jurisdiction" may not have sufficient interest in investing its resources to investigate and sanction conduct that may be taking place at some considerable distance away and with seemingly little if any impact on the "home jurisdiction".

30. In light of this increasing convergence of what were once distinct streams of practice by SLs and FLs, Singapore law and foreign law, the Committee was of the view that it may no longer be logical to maintain the current dichotomy in the professional standards governing SLs and FLs. Instead, maintaining this distinction may inadvertently create an inconsistent and uneven playing field for SLs and FLs practising in Singapore. The Committee therefore considered that it was needful to formulate a uniform set of minimum standards setting out universally accepted principles and rules applicable to all lawyers practising in Singapore. In this regard, the Committee felt that a hybrid of the principles-based approach adopted in the United Kingdom, and the current rules-based approach existent in the current PCR and related rules could be used.

B.2. Approach to formulation and content of uniform standards

31. In formulating and determining the content of such minimum standards, the Committee was mindful that:

    31.1. Such professional and ethical standards should take into account that lawyers in Singapore are now operating largely in the context of an international environment.

    31.2. A distinction should be made between the rules applicable to SLs and FLs engaged in the practice of Singapore law and FLs engaged solely in the practice of foreign law. For the latter, it was recognised that it may not be possible in every instance to reconcile different professional and ethical standards which could apply to FLs from various home jurisdictions, especially in specific areas where there are significant differences across jurisdictions such as rules governing issues involving conflicts of interest and confidentiality. Suitable legislative carve-outs and a system for exemptions in appropriate circumstances should therefore be devised.

    31.3. Given the shift to greater corporatisation, the Committee also felt that to enhance consumer protection, it was necessary to ensure that lawyers, whether SLs or FLs, who take on management roles within their law practices should have the professional responsibility of ensuring that the

law practice as a whole maintains adequate systems to (i) handle client money and accounts; (ii) deal with conflicts; and (iii) maintain client confidentiality.

31.4. The PCR as presently framed was inadequate for this purpose, and would need to be substantially reviewed, redrafted and modernised.

B.3. Oversight bodies for professional standards

32. Currently, the PCR and similar rules governing professional conduct are laid down by the Law Society, with the approval of the Chief Justice.

33. The Committee was of the view that a working body should be established to oversee the making and updating of professional standards for lawyers and law practices in Singapore. In this regard, it would be useful to establish a body similar to the Rules Committee, established under section 80(3) of the Supreme Court of Judicature Act, which comprises the Chief Justice, the AG, Judges from the Supreme and Subordinate Courts, as well as a number of senior practitioners. In the same way that the Rules Committee is supported by a Working Party, which has a wider practitioner composition and representation, there can be a PCR Working Group with wider representation.

34. At present the Law Society's Ethics Committee gives guidance on various aspects of professional conduct. The Committee considered that the Law Society's Ethics Committee's role and structure could be enhanced to give greater guidance under the new rules to be introduced.

Recommendations

35. The Committee recommends the following:

35.1. **Recommendation B1:** The current PCR should be reviewed and redrafted in replacement of the present PCR, taking into account the existing sets of Rules under sections 72, 73 and 75A of the LPA (dealing with Solicitors Accounts Rules and others). The new PCR should recognise that lawyers in Singapore are now operating largely in the context of an international environment, the varying professional and ethical standards which could be applied to FLs by their home jurisdictions and the management roles of lawyers:

35.1.1. ***Professional conduct rules of general application.*** The new PCR should apply to both SLs and FLs. It should provide for a clear delineation between general universally accepted principles and rules of conduct as to conduct befitting a member of the legal profession, and specific rules of professional conduct relevant only to those engaged in the practice of Singapore law or called to the Singapore Bar.

35.1.2. ***Professional conduct rules for management roles.*** Given the increased sophistication in which SLPs and FLPs may now

structure their law practice, for consumer protection purposes, lawyers, whether SLs or FLs, who take on management roles within their law practices should have the professional responsibility of ensuring that their law practice as a whole maintains adequate systems to (i) handle client money and accounts; (ii) deal with conflicts; and (iii) maintain client confidentiality. In this regard, a specific section setting out the principles and rules governing such management responsibilities should be included in the new PCR. Failure by a firm's management group of lawyers to maintain adequate systems in the three areas outlined should be treated as a breach of the new PCR, and trigger disciplinary action in accordance with the usual disciplinary regime for SLs and FLs (proposed in Section C below).

35.1.3. ***Specific rules that govern the professional conduct of SLs, and FLs who practise Singapore law.*** Specific rules relating to the practice of Singapore law will apply only to SLs and FPC holders[10]. SLs may be liable for breach of specific professional conduct rules even if they were only practising foreign law at the material time. The basis of the differential position is that SLs are regulated as members of the Singapore Bar.

35.1.4. ***FLs.*** FLs who do not practise Singapore law will be exempt from the specific rules relevant only to SLs and FPC holders. Aside from this, any FL may also apply to a new PCC (see paragraph 35.2.1 below) for specific exemptions from any of the rules in the new PCR, if he anticipates that the rule in question may potentially conflict with his home jurisdiction's rules.

35.2. **Recommendation B2:** Oversight bodies supporting and giving guidance on the PCR. The following bodies could be created to regulate the continued relevance and ease of use of the new PCR:

35.2.1. ***New PCC.*** A new PCC, similar to the Rules Committee, with senior representation from the Judiciary, Law Society, AGC, SL and FL community, and MinLaw, should be formed to oversee the new PCR. Non-practitioner members such as a retired Judge or academic may also be invited to sit on the new PCC. The new PCC should have the power to grant exemptions from the new PCR. The new PCC should also have the power to issue regulations and have the power to indicate specific areas of PCR carve-out from the new PCR which would be applicable to both

[10] Examples of such specific rules would include rules relating to the conduct of court proceedings (see Parts IV to VI of the current PCR) and rules peculiar to the practice of Singapore law and the running of an SLP, such as the general prohibition against referrals and contingency fees.

SLs and FLs[11];

35.2.2. ***New Working Group.*** A new Working Group nominated by the same agencies will periodically review and work out the detailed revisions to the new PCR.

35.2.3. ***New Advisory Committee.*** A new Advisory Committee should be formed to give advice to both SLs and FLs on ethical issues. Reliance on this advice could be either a mitigating factor or even an exculpatory factor in disciplinary proceedings against the lawyer in question.

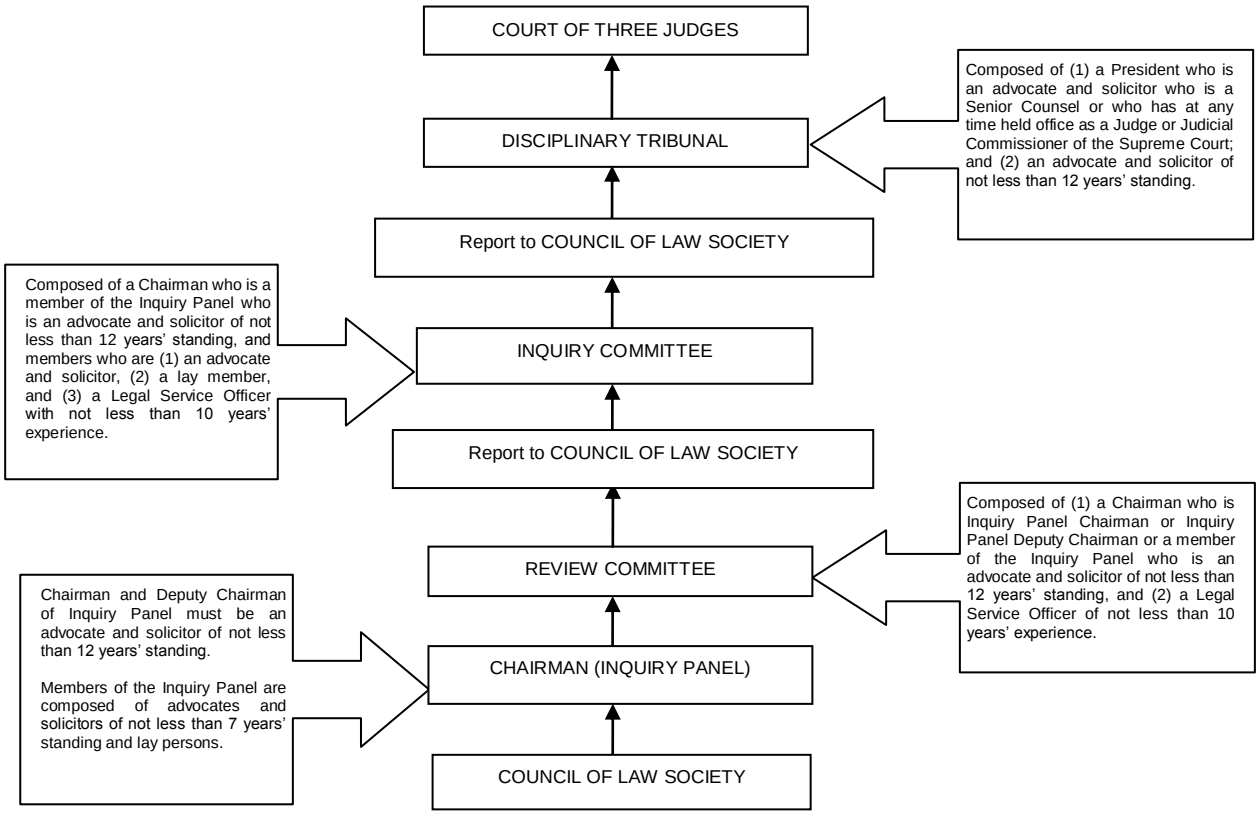
C. DISCIPLINARY FRAMEWORK FOR LAWYERS

36. The current disciplinary framework for SLs and FLs is bifurcated and dependent on whether the individual is an SL or FL, and whether the lawyer concerned is practising in an SLP or a foreign entity.

37. The framework for disciplinary proceedings for SLs in SLPs is detailed in Part VII of the LPA, and is summarised in the flowchart at **Figure I**, which illustrates the process flow and the composition of the relevant committees / tribunal at each stage of the process, where a complaint is made against an SL practising in an SLP.

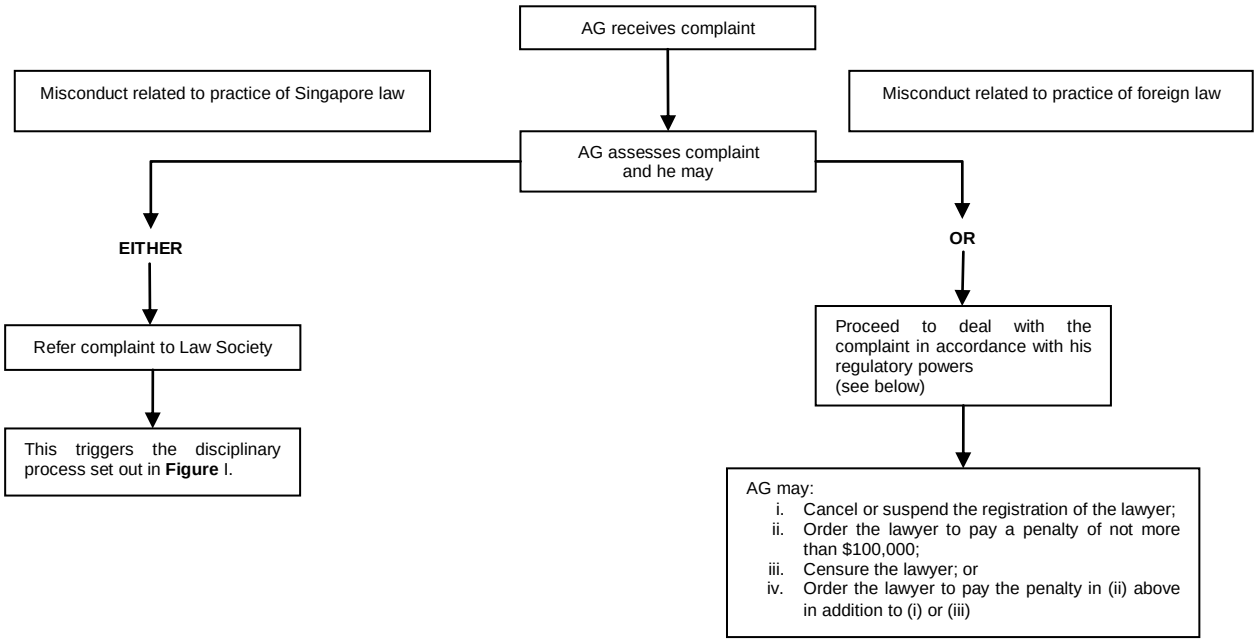
[11] For example, in granting PCR exemptions in relation to challenging areas of practice such as international commercial arbitration and "fly-in-fly-out" lawyers, the basic philosophy should be to ensure that the exemptions granted would not create an uneven playing field for SLs and FLs.

Figure I - Disciplinary Proceedings for SLs in SLPs



38. In the case of SLs practising Singapore and / or foreign law in foreign entities (whether a Licensed FLP, QFLP or JLV) and FLs, the AG as primary regulator will first filter the complaint. Where the complaint relates to the practice of Singapore law, the AG may refer the complaint to the Law Society, and the process flow set out at **Figure I** above will be triggered. Where the complaint relates to the practice of foreign law, the AG will assume regulatory jurisdiction, and may impose penalties or sanctions on the lawyer in accordance with his regulatory powers under section IXA of the LPA. The flowchart at **Figure II** illustrates the relevant filtering process.

Figure II - Disciplinary Process Applicable to SLs Practising in FLPs and FLs



39. In terms of sanctions, where the misconduct pertaining to an FPC holder in respect of his practice of Singapore law has been referred by the AG to the Law Society for action, section 82B of the LPA provides for the sanctions that can be imposed by the Supreme Court, upon due cause being shown:

    39.1. To have his registration as an FPC holder cancelled or suspended for such period as the Court may think fit;

    39.2. To pay a penalty of not more than S$100,000;

    39.3. To be censured; or

    39.4. To suffer the punishment referred to in paragraph 39.2 in addition to the punishment referred to in paragraphs 39.1 or 39.3.

40. For the practice of foreign law, which comes under the sole purview of the AG, while the AG has powers to (i) cancel or suspend the registration of the lawyer; (ii) order the lawyer to pay a penalty of not more than $100,000; (iii) censure the lawyer; or (iv) order the lawyer to pay the penalty referred to in (ii) in addition to imposing the punishment referred to in (i) or (iii),[12] there is no formal institutional disciplinary process for SLs and FLs practising only foreign law. The practice of foreign law in Singapore is regulated with a light touch and the discipline and conduct of an FL practising foreign law is left largely to the regulatory body of his home jurisdiction.

[12] See section 130R(4A) of the LPA.

41. The Committee recommends a more coherent and consistent regulatory approach for all SLs and FLs.

42. An examination of other jurisdictions reveals that most employ a consistent regime for both local and foreign lawyers. In England and Wales, foreign lawyers are subject to the Solicitors' Disciplinary Tribunal as local lawyers. Likewise, other jurisdictions such as Hong Kong, Australia, Canada, Germany and the United States apply the same disciplinary processes to local and foreign lawyers, with some modifications.

43. The Committee considers that the framework should be streamlined and rationalised such that SLs and FLs practising as lawyers in Singapore whether in SLPs or in foreign entities (Licensed FLPs, QFLPs, JLVs) should be subject to the same disciplinary process as SLs practising in SLPs. This will bring the regulation of FLs in line with what is observed in other major jurisdictions.

44. The Committee considered that the Supreme Court should ultimately remain the guardian of who, as individual practitioners, can and cannot practise in Singapore. As such, the power of the Supreme Court to exercise overall oversight over the practice of law in Singapore should be retained in respect of SLs and enlarged to cover FLs.

Recommendations

45. The Committee recommends the following:

45.1. **Recommendation C1:** A single discipline regime: the Supreme Court should have overall regulatory oversight over the practice of law in Singapore of *both* SLs and FLs.

45.2. **Recommendation C2:** The current disciplinary framework for SLs detailed in Part VII of the LPA, which is summarised in the flowchart at **Figure I**, should apply to all SLs and FLs practising in SLPs and foreign entities (whether a Licensed FLP, QFLP or JLV) alike. Where an FL is subject to the disciplinary process, the framework should be modified to accord FL representation at every stage,[13] *viz* the Review Committee, Inquiry Committee and Disciplinary Tribunal. To maintain the respective committees and Tribunal at an operationally efficient size, it is proposed that for such cases involving FLs:

45.2.1. The current committees (Review Committee and Inquiry Committee) to be modified, such that the Legal Service Officer member of the Review Committee and the advocate and solicitor member of the Inquiry Committee (i.e. the advocate and solicitor who is not the chairman of the Inquiry Committee) will be replaced with an FL of similar seniority. Such FLs could be selected from a

[13] In Hong Kong, a foreign lawyer is added to the Solicitors' Disciplinary Tribunal whenever a foreign lawyer is the subject of the complaint: see section 9B(1A) of the Legal Practitioners Ordinance 1994 (Cap 159).

new Inquiry Panel of FLs to be appointed by the Chief Justice.

45.2.2. The Disciplinary Tribunal whose members are appointed by the Chief Justice, to comprise: (1) a President who is an SL who is a Senior Counsel or who has held office as a Judge or Judicial Commissioner of the Supreme Court[14]; and (2) an FL of not less than 12 years' standing[15]. Such an FL could similarly be selected from the new panel of FLs referred to in paragraph 45.2.1 above.

45.2.3. The same grounds for the Law Society Council / Disciplinary Tribunal / Court of three Judges to exercise their powers of sanction against SLs would apply to FLs. SLs and FLs will likewise be subject to penalty, censure, suspension or cancellation of their registration by the Court of three Judges. The Court of three judges will also be able to report the matter and the outcome to the FL's home jurisdiction(s).

45.2.4. The general grounds for disciplinary sanction under section 83(2) of the LPA which apply to SLs should also apply to FLs. Thus, the effect of a criminal conviction will be the same for an FL as an SL. As with SLs, in any disciplinary proceedings against an FL consequent upon his conviction for a criminal offence, an Inquiry Committee, a Disciplinary Tribunal and the Court of three Judges of the Supreme Court shall accept his conviction as final and conclusive. Thus if an FL has defrauded anyone, his registration as an FL could be cancelled. Conduct that is grossly improper, or unbefitting of a member of an honourable profession, would also attract sanction.

45.2.5. Complaints by Judges, AG, etc. As with SLs, situations where complaints are made straight to a Disciplinary Tribunal would equally apply to an FL. A complaint would only go straight to the Disciplinary Tribunal where (i) the complaint is made by any Judge of the Supreme Court, the AG or the SILE; and (ii) the Judge, the AG or the SILE requests that the matter be referred to a Disciplinary Tribunal (section 85(3)(b) LPA). This could similarly lead to the FL's registration being cancelled.

D. INSTITUTIONS AND MEMBERSHIP

46. The changes to the professional conduct and disciplinary regime seek to establish a basic framework for progressive and fuller integration of the SL and FL legal fraternity. However, any move to encourage greater integration of FLs within the local fraternity will also require enhancements to the current institutional structures, in particular, the Law Society and the SAL. In this

[14] Similar to the current position.
[15] Currently, provision is for the member to be an advocate and solicitor of not less than 12 years' standing.

regard, the current regime is as follows:

46.1. ***Law Society.*** The membership and composition of the Law Society's membership is SL centric. All SLs who are in practice are required to be members of the Law Society and pay subscription dues. FL participation in the Law Society activities is only required in the case of an FL who is either an FL holding the FPC (registered by the AG under section 130I of the LPA) or an FL holding a partnership / directorship position and / who owns shares / equity in an SLP (granted the approval of the AG under section 130L(1) of the LPA). Such FLs are required to join the Law Society as "foreign practitioner members". Other FLs registered to practise foreign law in Singapore may, but are not required to, join the Law Society as "non-practitioner members".

46.2. ***SAL.*** All SLs whether practising or non-practising, are (unless waiver is granted), required to be members of the SAL. FLs are not required to be members of the SAL, unless they are either FLs holding the FPC or FLs holding partnership / directorship positions and / who own shares / equity in SLPs.

47. The Committee is of the view that in order to be in line with the practice of other jurisdictions (the United Kingdom, Australia (New South Wales), United States (New York), Hong Kong and Shanghai), where the issuance of PCs or registration with a regulatory authority is not dependent on membership with a professional body, and therefore, professional membership for foreign lawyers is usually not compulsory, it should continue to be entirely optional for FLs who practise only foreign law to join the Law Society or the SAL.[16] However, greater participation by the FL community in Law Society or SAL activities should be encouraged.

Recommendations

48. The Committee recommends the following:

48.1. **Recommendation D1:** All SLs should continue to be full members of the Law Society and the SAL.

[16] In jurisdictions such as the United Kingdom (England & Wales) and the United States (New York), only lawyers who are admitted to their Bar / Supreme Court are qualified to take up membership. In jurisdictions such as Australia (New South Wales) and Hong Kong, foreign lawyers are permitted to take up membership, but only have "associate" member status with limited rights. In Shanghai, foreign lawyers may only take up membership if they are invited by the Bar Association, and such "specially invited" members have limited rights, like "Associate" members in Australia (New South Wales) and Hong Kong.

"Associate" / "specially invited" members generally have the right to use the Law Society's / Bar Association's facilities and receive its regular publications, but do not have the right to vote at general meetings or hold any office. In Australia (New South Wales) and Shanghai, such "associate" / "specially invited" members also have no right to attend general meetings and / or receive notices of such general meetings. However, in Hong Kong, "associate" members do have such rights.

48.2. **Recommendation D2:** Taking into consideration the distinction made in other jurisdictions between the issuance of PCs / registration and membership with a professional body, membership with the Law Society and the SAL should remain optional for FLs practising solely foreign law. However, such FLs should be strongly encouraged to do so on a voluntary basis. As such, a new category of "associate members" of the Law Society should be introduced to replace the current "foreign practitioner membership" which is limited to FLs holding the FPC and FLs who hold partnership / directorship positions and / who own shares / equity in SLPs.

48.3. **Recommendation D3:** As with present practice, "associate membership" with the Law Society and the SAL will continue to be mandatory for FLs holding the FPC and FLs who hold partnership / directorships positions and / who own shares / equity in SLPs.

48.4. **Recommendation D4:** Consistent with the prevailing approach in other jurisdictions, "associate members" of the Law Society will not have the right to (i) attend general meetings or receive notices of general meetings; (ii) vote at general meetings; or (iii) elect members to Council / be elected to Council. However, "associate members" will enjoy certain benefits such as the right to use the Law Society's facilities and receive its regular publications. The Law Society should look at the details of the benefits of "associate" members and how such members could further integrate into the legal community.

SECTION 3 - REGULATION OF ENTITIES PROVIDING LEGAL SERVICES OUT OF SINGAPORE

49. SLP and FLP entities providing legal services out of Singapore are currently regulated under different regimes. The current dichotomy can be summarised as follows:

49.1. ***SLPs***. SLPs as entities are subject to oversight (to a limited degree) by the Law Society. The LPA imposes upon SLPs obligations to (i) obtain the Law Society's approval in relation to names, business structures and sharing of premises with non-law practice entities; and (ii) comply with the Law Society's directions in relation to certain operational matters. The LPA also accords the Law Society with powers for safeguarding monies in the bank account of an SLP.

49.2. ***FLPs and collaborative arrangements.*** On the other hand, all foreign entities (whether a Licensed FLP, QFLP or JLV) and SLP-FLP collaborative arrangements come under the regulation of the AG. All FLPs, and all collaborative arrangements between SLPs and FLPs, are subject to mandatory licensing by the AG. The AG also has the power to sanction FLPs for breach of any of the rules applicable to them by suspending or revoking licences or applying for civil penalties against them. The LPA also accords the Law Society with similar powers of intervention in the practice of Singapore law by a JLV or its constituent FLP, a QFLP or a Licensed FLP, as those exercisable in relation to an SLP.

50. The Committee observed that the present regulatory framework for law practices had developed along these disparate lines for historical reasons, at a time when the local law practice population was largely homogeneous and structured along traditional lines as sole proprietorships and partnerships. However, in tandem with the growth and development of Singapore's legal services sector, liberalisation had since occurred at the entity level. In this regard, changes to the LPA several years ago allowed SLPs to organise as LLPs and LLCs. In more recent years, SLPs had been allowed to enter into profit and equity-sharing arrangements with FLs and FLPs. For foreign entities, liberalisation changes and measures had also been introduced to allow such entities to participate in the practice of Singapore law to varying degrees, as Licensed FLPs or QFLPs, through JLVs and FLAs, or by taking an equity or profit stake in an SLP. As a result of these changes, detailed rules had developed over time to ensure SLPs remained run and controlled by SLs, and the practice of Singapore law, particularly in domestic ring-fenced areas remained the province of SLPs.

51. At the same time, global marketplace developments continued to increase pressure for new approaches to be taken to the provision of legal services. In particular, jurisdictions such as Australia (New South Wales and Queensland) and the United Kingdom now allowed law practices to conduct their practice through ABS models such as LDPs, MDPs and ILPs.

52. Taking into account these developments, the Committee felt that it was necessary to fundamentally review the current regime with a view to assessing how it could be better modernised and structured for the future. The following key areas were considered:

52.1. Licensing framework for law practices. Whether a more consistent regulatory approach could be applied to all law practice entities (whether local or foreign), and if so, how this could be achieved;

52.2. Scope of entity regulation. The content and focus of entity-level regulation. In this regard, the distinction between business regulation and professional regulation was discussed;

52.3. Regulation and enforcement; and

52.4. Upcoming trends - ABS. Whether ABS should be permitted in Singapore and the extent to which our framework should be modernised to accommodate such structures.

E. LICENSING FRAMEWORK

53. Under the current framework, the regulation of SLP and FLP entities come under the oversight of different regulatory bodies and are subject to different regulatory regimes and requirements.

E.1. SLPs

54. All SLPs are required to be registered with ACRA under the Business Registration Act (Cap. 32),[17] the Companies Act (Cap. 50)[18] or the Limited Liability Partnerships Act (Cap. 163A),[19] as the case may be. In addition, the LPA requires SLPs to obtain the Law Society's approval in respect of certain limited matters prior to establishment.[20]

55. SLPs primarily practise Singapore law. They are allowed to practise the full suite of Singapore law, and there are no restrictions on the areas of Singapore law that an SLP may practise. In addition, SLPs may also employ FLs and offer foreign law advice. Under the current rubric, no regulatory requirements are imposed on SLPs in respect of their practice of foreign law, save that FLs employed by SLPs are required to register with the AG. The practice of foreign law by SLPs *qua* entity, and the practice of foreign law by SLs working within

[17] For sole proprietorships and partnerships.
[18] For LLCs.
[19] For LLPs.
[20] The proposed name of the SLP must be approved by the Law Society prior to establishment: see Rule 4(1), Legal Profession (Naming of Law Firms) Rules. In addition, the Law Society's prior approval is also required where (i) the SLP is structured as an LLP or LLC (sections 81B, 81Q LPA); and / or (ii) the SLP wishes to share premises with non-law firm entities (Rule 9, PCR).

SLPs, are largely left unregulated.

56. SLPs are typically fully owned and run by SLs. However, where foreign ownership / shareholding, and any collaborative arrangement between a SLP and an FL / FLP[21] are contemplated, such arrangements require the AG's approval[22], and are subject to the SLP strictly adhering to specific business criteria, or "minimum criteria" (the content of which is discussed in greater detail in Section F below).

E.2. FLPs

57. Like SLPs, all FLPs are required to be registered with ACRA under the Business Registration Act (Cap. 32), the Companies Act (Cap. 50) or the Limited Liability Partnerships Act (Cap. 163A). [23]

58. FLPs in Singapore primarily practise foreign law. Under the current rubric, any FLP wishing to offer legal services in Singapore must be licensed by the AG. FLs and SLs employed by FLPs are required to register with the AG.

59. All FLPs and all collaborative arrangements between SLPs and FLPs (as mentioned above) are also subject to a mandatory licensing regime by the AG under Part IXA of the LPA,[24] in addition to ACRA registration. AGC's LPS handles the day to day work connected with the licensing and regulation of foreign entities. In this regard, there are currently four categories of licenses issued by the AG: (i) FLP licence; (ii) QFLP licence; (iii) JLV licence; and (iv) FLA licence. In addition, the AG also issues RO licences to FLPs, which allow an FLP to establish a marketing presence in Singapore but not to offer legal services here.

E.3. Observations

60. Noting that other common law jurisdictions like England and Wales, and Hong Kong, also had integrated licensing systems,[25] the Committee took the view

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[21] Viz.

- SLPs which employ FLs within their local practices and the FLs who share in the profits and equity of the local practice;
- SLPs which tie up with FLPs based overseas through profit and equity sharing arrangements and / or concurrent partnership arrangements; and
- SLPs which tie up with FLPs based in Singapore (viz. QFLPs and Licensed FLPs) through JLVs or FLAs.

[22] Section 130L LPA.

[23] At present, FLPs commonly adopt the structure of their parent firm when establishing a branch in Singapore – whether as a partnership, limited liability partnership or company in accordance with the laws of their home jurisdiction. They are also allowed to incorporate or establish local vehicles under the Business Registration Act (Cap. 32), the Companies Act (Cap. 50) and the Limited Liability Partnerships Act (Cap. 163A). FLPs that merely wish to establish a marketing presence in Singapore but do not wish to offer legal services here may establish Representative Offices.

[24] There is no similar requirement for SLPs.

[25] In Hong Kong, both Hong Kong and foreign law practices are required to register with the Law Society of Hong Kong to carry on a legal practice. The United Kingdom's regulatory framework also does not distinguish between United Kingdom's practices and foreign law practices, but on the type of

that given the growing complexity in the way law practices were now formed and run as businesses, it made sense to consolidate the current disparate systems and establish one integrated licensing system, administered by a single central body to oversee all law firm entities (whether local or foreign) operating in Singapore.

61. Looking to the future, an integrated licensing system would allow for a greater streamlining of processes and harnessing of IT so as to make it administratively more convenient for SLPs and FLPs to set up offices in Singapore. Establishing such a system would also allow for more consistent supervision and enforcement of "business criteria" applicable to both local and foreign law firm entities and facilitate a more coherent and consistent regulatory approach.

62. The licensing requirement need only extend to law firm entities offering legal services from Singapore. As such, licenses for ROs established solely for marketing purposes would not be necessary, and a notification to the regulator would suffice.

Recommendations

63. Taking into consideration the above, the Committee recommends the following:

63.1. **Recommendation E1**: Consistent licensing approach. A consistent approach for the licensing of all law firm entities should be adopted. The disparate regimes currently applicable to law practices should be consolidated into a single licensing regime.

63.2. **Recommendation E2**: Single licensing authority. A new licensing authority called the LSRA should be established under the purview of MinLaw to administer the licensing framework. Under this new licensing framework:

63.2.1. ***Single licensing authority.*** All law firm entities in Singapore will be licensed by the LSRA, whether local or foreign.

63.2.2. ***Regulation of business matters.*** The LSRA should regulate business criteria such as names of law practices, and business criteria relevant to the different law firm entity structures.

63.2.3. Consistent with current practice, SLPs seeking to enter collaborative arrangements involving foreign ownership, profit sharing or concurrent partnerships will need to obtain prior approval. To standardise requirements, the maximum caps relating to foreign ownership, profit sharing and SL to FL ratios currently applicable to such collaborative arrangements should apply across the board to all SLPs. The current criteria applicable

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legal services provided; any entity seeking to engage in a list of reserved legal services would need to obtain a licence from the relevant regulator which is in charge of the regulation of that category of legal services.

to Licensed FLPs, QFLPs, JLVs and FLAs will remain unchanged.

63.3. **Recommendation E3**: Cost effective and user friendly system. The introduction of a licensing regime should not impose unnecessary administrative or business costs on law firm entities. Therefore, the LSRA should work with ACRA, AGC's LPS and the Law Society to make it administratively less cumbersome for law firm entities to set up through establishing a 'one-stop shop' for licence applications:

63.3.1. ***Automatic licenses for existing law practices.*** For smooth transition into this new regime, the licensing framework should be phased in conveniently for existing law practices, and kept as simple as possible. Therefore, existing law practices should be issued licences automatically.

63.3.2. ***New law firm entities.*** Only local and foreign law firm entities seeking to establish after introduction of the new regime would be required to specifically apply for licensing approval.

63.3.3. ***One off application.*** Save for QFLPs[26], the licence should generally be issued on a one-off basis, and should be valid until revoked, suspended or cancelled by the LSRA. As with current AGC's LPS practice, specific law firm entities which are new or seek to adopt new collaborative arrangements may be issued term licences for a period.

63.3.4. ***Reporting requirements.*** All licensed law firm entities would be required to update the LSRA if there are any changes to the firm's business details such as its address, the names of the lawyers responsible for its management and other particulars, and provide annual statutory declarations as to its compliance with the applicable business criteria (see Section F below).[27]

63.3.5. ***Requirements for SLPs that are traditionally run and fully owned by SLs.*** These will be kept minimal and are expected to entail no more than the requirements that a law practice currently under the Law Society's oversight would be subject to.[28]

63.3.6. ***Representative offices.*** ROs should not be required to apply for a licence, since they are not permitted to provide legal services in Singapore. Instead, ROs would only be required to give the LSRA written notice that an RO has been established or has ceased operations.

[26] QFLP licences are currently issued in the course of specific exercises, with an applicable term of 5 years or less.

[27] In deciding the regulatory approach towards law firm entities (and the registration of FLs), the LSRA should make reference to the current regulatory approaches of the AG and the Law Society.

[28] The areas of regulation would include, for example, the approval of a law firm entity, premises of a law firm entity and cessation of business of a law firm entity.

F. SCOPE OF ENTITY REGULATION: DISTINCTION BETWEEN BUSINESS REGULATION AND PROFESSIONAL REGULATION

64. The Committee noted the concerns expressed by members of the legal fraternity in consultations that regulation at the entity level by the LSRA should not impinge on matters relating to professional conduct which were already dealt with under the framework for individual regulation.

65. The Committee was of the view that a clear distinction should be drawn between business criteria and professional standards and ethics rules. Matters relating to professional standards and ethics, including misconduct relating to the management of one's practice by the management of a law firm entity should be dealt with at the individual level, under the rubric of the disciplinary framework overseen by the Supreme Court. At the entity level, regulation by the LSRA should focus only on compliance with business criteria.

F.1. Business criteria applicable at entity level

SLPs

66. The Committee noted that under the current regime, where foreign ownership / shareholding, and any collaborative arrangement between a SLP and an FL / FLP[29] is contemplated, such arrangements require the AG's approval[30], and are subject to the SLP entity strictly adhering to the following "minimum criteria":

66.1. SL[31] : FL[32] ratio of at least 2:1.[33]

66.2. SL partner[34] : FL partner ratio of at least 2:1.[35]

66.3. The Managing Partner(s) must be an SL, and at least 2/3 of the voting rights in a management / executive committee or equivalent, if any, must be held by SLs.

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[29] Viz.
- SLPs which employ FLs within their local practices and the FLs who share in the profits and equity of the local practice;
- SLPs which tie up with FLPs based overseas through profit and equity sharing arrangements and / or concurrent partnership arrangements; and
- SLPs which tie up with FLPs based in Singapore (viz. QFLPs and Licensed FLPs) through JLVs or FLAs.

[30] Section 130L LPA.

[31] 'SLs' here refer to SLs who are not nominees or trustees for FLs or FLPs.

[32] FPC holders are counted as FLs.

[33] The total number of SLs in the SLP must be at least twice the total number of FLs registered to practise ("permitted areas of legal practice" and / or foreign law) in the SLP.

[34] 'Partner' here refers to all partners, whether equity partners, salaried partners or other types of partner.

[35] The total number of SLs who are partners of the SLP must be at least twice the total number of FLs who are partners.

66.4. At least 2/3 of the equity share of the firm must be held by SLs.

66.5. At least 2/3 of the voting rights in the firm must vest in SLs.

66.6. All the lawyers working in the "permitted areas of legal practice" must be SLs or FPC holders.

66.7. The cumulative amount of payment out of total profits by the SLP during any financial year of that SLP to all FLs and / or FLPs shall not exceed a third of the profits[36] of that SLP during that financial year.

67. The Committee observed that to streamline the current regime, such "minimum criteria" could apply across the board to all SLPs as uniform business criteria applicable to all SLPs entitled to practise the full range of Singapore law work, including ring-fenced domestic areas such as litigation. In this regard, the Committee observed that the practical impact of introducing this refinement would be minimal, as the majority of existing SLPs were traditionally structured and fully owned and run by SLs. They would therefore already be fully compliant with these criteria.

FLPs

68. In the case of FLPs, all licences[37] are issued subject to such conditions as the AG may impose on the licensee, and the conditions prescribed under the LPIS Rules (which include the privileges and restrictions attached to such licence categories – including the extent to which they may or may not practise Singapore law). In this regard:

68.1. ***Licensed FLPs.*** Licensed FLPs may practise Singapore law through SLs, and through FLs holding an FPC, in the limited context of international commercial arbitration[38].

68.2. ***QFLP.*** A QFLP may practise Singapore law through SLs, and through FLs holding an FPC, in "permitted areas of legal practice". Statutory requirements under the LPA and LPIS Rules apply to QFLPs.[39] QFLPs are also subject to licence conditions in respect of the commitments that

[36] The annual financial statement of the SLP will be used to determine the profit base. Thus, for example, revenue from overseas offices will be included only if it is recognised in the SLP's accounts (instead of being booked or recognised overseas).

[37] Except for the QFLP licence and the RO licence, the remaining licences (viz. FLP, JLV and FLA), are generally issued only once, and are valid until they are suspended, revoked or cancelled by the AG.

[38] In the course of giving advice on agreements contemplating international commercial arbitration where Singapore is the seat of the arbitration or Singapore law is the law governing the contract.

[39] Under the LPIS Rules, the number of SLs registered to practise Singapore law in a QFLP shall not at any time exceed 4 times the total number of FLs registered to practise permitted areas of Singapore law in the QFLP, FLs registered to practise foreign law in the QFLP and SLs registered to practise foreign law in the QFLP. When a QFLP enters a JLV arrangement: (i) the wider QFLP FL : SL ratio of 1FL : 4SL would apply to the JLV (instead of the 1FL : 1SL applicable to JLVs between FLPs and SLPs); and (ii) the usual ratios of partners / directors of the JLV would not apply.

were made during the application process.

68.3. ***JLV.*** JLVs, like QFLPs, may practise within the "permitted areas of legal practice". Various statutory criteria under the LPA and LPIS Rules apply. The constituent FLP of a JLV is required to practise law in Singapore through the JLV.[40] The constituent SLP would have to comply with the "minimum criteria" described in paragraph 66 above.

68.4. ***FLA.*** An FLP may collaborate with an SLP to form an FLA. The FLA may market or publicise itself as a single service provider competent to provide legal services in all areas which the constituent law practices are qualified to provide. An FLA may also prepare documents relating to cross-border transactions, including documents governed by Singapore law, and issue legal opinions relating to Singapore law. Under the FLA structure, the SLP and FLP concerned remain legally separate entities. Pursuant to the augmented FLA scheme effective from 1 June 2012, an SLP and FLP are now allowed to collaborate more closely as two free-standing firms through profit and equity sharing arrangements,[41] as well as concurrent partnership positions, all of which were not previously allowed. The constituent SLP would have to comply with the "minimum criteria" described in paragraph 66 above.

69. In view of their differing areas of practice of Singapore law, the Committee was of the opinion that the different business criteria currently applied to the different types of FLPs (e.g. JLVs, QFLPs, Licensed FLPs) continued to be necessary. In this regard, the Committee noted that the precise business criteria which should be applied to FLPs should reflect the policy on liberalisation – as the extent to which each of these FLP vehicles is allowed to participate in the practice of Singapore law is modified, the business criteria applicable to each vehicle should similarly be reviewed and modified accordingly. Given that the current criteria reflected the prevailing policy on liberalisation, the criteria should remain unchanged.

70. The Committee was of the view that the LSRA could oversee the compliance by SLPs, FLAs and foreign entities (whether Licensed FLP, QFLP, JLV) of the above-mentioned business criteria. In addition, for consistency across the board, other business criteria such as naming conventions for law firm entities should be regulated by the LSRA. The LSRA should consult with the Law Society across the range of regulatory matters.

[40] A JLV may be constituted either as a partnership between an FLP and an SLP, or be incorporated as a company under Singapore law, with the shares in the company being held by an FLP and an SLP or by their respective nominees. The JLV may market itself as a single service provider and the SLP may share up to 49% of its total profits in the "permitted areas of legal practice". If the JLV is a partnership, the number of FLP equity partners who are resident in Singapore shall not be greater than the number of SLP equity partners; if the JLV is a corporation, the number of directors nominated by the FLP shall not be greater than the number of directors nominated by the SLP. The JLV and its constituent FLP are required to maintain a 1SL : 1FL ratio, and the constituent SLP is required to maintain a 1SL : 1FPC holder ratio.

[41] Up to a maximum of 1/3 share.

Recommendations

71. Taking into consideration the above, the Committee recommends the following:

71.1. **Recommendation F1**: Differential regulation of business regulation and professional issues. A clear distinction between business regulation and professional regulation should be maintained:

71.1.1. ***Regulation of professional conduct matters.*** The Law Society will continue to exercise its powers of intervention and maintain its disciplinary jurisdiction over professional conduct matters, with the ultimate oversight of the Supreme Court.

71.1.2. ***Regulation of business matters.*** The LSRA, established under the oversight of MinLaw which sets and reviews the relevant liberalisation policies and accompanying business criteria, will assume the role of entity regulator. The business criteria and the scope of the LSRA's powers and functions should be clearly stated in legislation. The LSRA should consult with the Law Society across the range of regulatory matters.

71.2. **Recommendation F2**: Business criteria. As mentioned in paragraph 63.2.3, to streamline the current requirements, the "minimum criteria" (viz. maximum caps for foreign ownership, profit sharing and SL to FL ratios currently applicable to SLP-FLP collaborations set out in paragraph 66 above) should be applicable to all SLPs.[42] The criteria applicable to Licensed FLPs, QFLPs, JLVs and FLAs should remain unchanged.

G. REGULATION AND ENFORCEMENT POWERS AT ENTITY LEVEL

72. The Committee also considered the scope of the regulatory and enforcement powers that should reside in the LSRA under the new single licensing regime. In this regard, the Committee reviewed the existing regulatory and enforcement powers exercised by the AG over foreign entities licensed with AGC's LPS, and the Law Society's existing powers of intervention in law practices.

Powers to Investigate and Sanction

73. Under the current legislation, the AG has the power to sanction all FLPs (i.e. Licensed FLPs, QFLPs and JLVs, including those operating in FLAs) and other foreign entities (i.e. ROs) for breach of any of the provisions under Part IXA of the LPA (i.e. the applicable licensing conditions), either directly or indirectly, by:

[42] All existing SLPs, whether or not they are currently in collaborative arrangements with FLPs, are already in compliance with the "minimum criteria". SLPs which wish to set up after the commencement of the new framework should ensure that they comply with the "minimum criteria".

73.1. Suspending or revoking its licence (i.e. Licensed FLP, QFLP, JLV, FLA or RO licence, as the case may be);[43] and / or

73.2. Bringing an action in court to seek an order for a civil penalty of up to S$100,000 to be paid by the FLP.[44]

74. The procedure applicable to suspension or revocation is as follows:

74.1. Prior to suspending or revoking the licence, the AG would give the FLP not less than 14 days to make representations in writing.[45]

74.2. Thereafter, the AG has the power to directly suspend or revoke the FLP's licence by notice in writing, if he is satisfied that there is sufficient reason for doing so.[46]

74.3. In the case of a QFLP, the Minister of Law's approval is required before revocation or suspension.[47]

75. As regards the imposition of a civil penalty, the procedure is as follows:[48]

75.1. The AG must first commence proceedings in court against the FLP in question.

75.2. Thereafter, the AG would have to satisfy the court on a balance of probabilities that the FLP in question had breached the provisions under Part IXA, after which the court would then have the power to impose the civil penalty. The AG does not have the power to directly order a civil penalty.

76. The Committee observed that with the establishment of the new LSRA to take over the functions of AGC's LPS, it would be desirable for the LSRA to have similar powers as suitably modified, to investigate breaches of the licensing conditions and business criteria, and to impose appropriate sanctions. The LSRA would be helmed by an office holder appointed to discharge such functions. A process for appeals from decisions made by the office holder should be provided for.

Powers of Intervention

77. The Committee also noted that the Law Society has existing powers[49] to intervene in an SLP or the practice of Singapore law by a JLV or its constituent FLP, a QFLP or a Licensed FLP in limited aggravated circumstances such as in

[43] Sections 130G-130H LPA.
[44] Section 130U LPA.
[45] Sections 130G(3), 130H(3) LPA.
[46] Sections 130G(1), 130H(1) LPA.
[47] Section 130H(1) LPA.
[48] Section 130U LPA.
[49] First Schedule, Part II, LPA.

the event of a lawyer's bankruptcy, death, incapacity, commitment to prison etc,[50] with powers to take possession of the law practice's client moneys as well as the law practice's documents.[51]

78. In this regard, the Law Society can exercise such powers of intervention:

78.1. On its own initiative, after giving notice that it intends to exercise these powers where, for example:

78.1.1. the Law Society's Council has reason to suspect dishonesty on the part of any officer or employee of the SLP; [52]

78.1.2. the Council is satisfied that there has been a contravention of any of the Legal Profession (Solicitors' Accounts) Rules; or [53]

78.1.3. the name of a solicitor has been removed from or struck off the roll or a solicitor has been suspended from practice, or where the LLC or LLP is under receivership or liquidation or judicial management.[54]

78.2. Upon receiving a complaint that there has been undue delay on the part of the SLP in connection with any matter, where the following process is triggered:[55]

78.2.1. The Law Society invites, by notice in writing, the SLP to give an explanation within a period of not less than 8 days specified in the notice;

78.2.2. The SLP fails within that period to give an explanation which the Council regards as satisfactory; and

78.2.3. The Law Society thereafter gives notice that it intends to exercise these powers.

78.3. The SLP may appeal to the High Court against the Law Society's decision to exercise its powers of intervention.[56]

79. The Committee was of the view that under the new licensing rubric for all law practices, given that the running of a law practice was a professional issue, the Law Society would be the appropriate body to continue to exercise such powers of intervention.

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[50] First Schedule, Part I, LPA.
[51] Section 74 of the LPA.
[52] First Schedule paras 1(1)(a), 5(d), 8A(d) LPA.
[53] First Schedule paras 1(1)(c), 5(a), 8A(a) LPA.
[54] First Schedule paras 1(1)(i), 5(1)(b)-(c), 8A(1)(b)-(c) LPA.
[55] First Schedule paras 3, 6, 8B LPA.
[56] First Schedule paras 10(4), 13(8) LPA.

Recommendations

80. Taking into account the above, the Committee recommends the following:

80.1. **Recommendation G1**: The new LSRA should have the power to investigate into breaches of the licensing conditions and business criteria, and to impose appropriate sanctions. Given its functions, the LSRA should be helmed by a statutorily designated officer such as a "Director of Legal Services". Appeals from decisions made by the officer could be heard by the Minister for Law. [57]

80.2. **Recommendation G2:** The proposed LSRA should have sufficient powers to obtain relevant information and statistics necessary to carry out its functions and be accorded the following powers:

80.2.1. ***Referral of Complaints***. The LSRA should be able to refer complaints relating to breaches of the LPA and relevant subsidiary legislation such as the new PCR, directly to the Law Society.

80.2.2. ***Investigation.*** The LSRA should have the discretion to commence investigations on its own initiative or upon receiving a complaint that the law firm entity has breached the applicable business criteria. In this regard, the proposed procedure set out in **Figure III** below could be adopted. The LSRA should have the following powers of investigation over a law firm entity, whether it is an SLP or a foreign entity (whether Licensed FLP, QFLP or JLV):

80.2.2.1. Enter a law firm entity's premises;

80.2.2.2. Inspect and take copies of books and other documents; and

80.2.2.3. Examine any of its employees and / or interested parties.

The law firm entity should also be given the opportunity to give written representations to the LSRA on matters under investigation.

80.2.3. ***Sanctions***. Where, as a result of its investigations, the LSRA finds that there has been a breach of the business criteria applicable to law firm entities, the LSRA should have the discretion to impose the following powers of sanction over a law

[57] A similar approach is adopted in the regulation of hospitals and clinics in Singapore. Under the Private Hospitals and Medical Clinics Act (Cap. 248), the Director of Medical Services is responsible for investigating suspected breaches of the rules applicable to medical institutions, determining whether or not there has indeed been a breach and imposing sanctions on the medical institutions.

firm entity:[58]

80.2.3.1. Issuance of a warning;

80.2.3.2. Imposition of a financial penalty, up to a maximum of S$100,000;[59] and

80.2.3.3. Revocation, suspension or cancellation of licences.

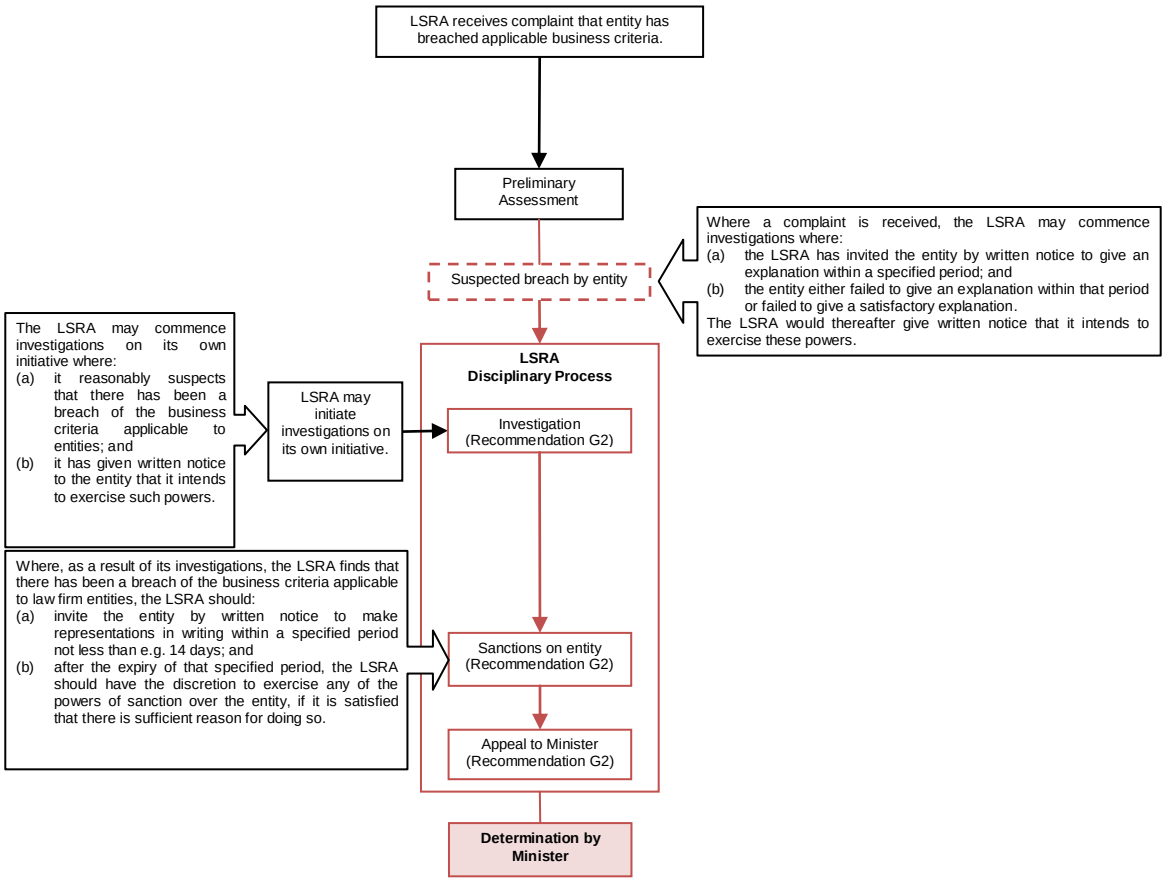
80.2.4. ***Appeals.*** Entities which are dissatisfied with the decision of the LSRA in respect of the exercise of its disciplinary powers should be allowed to lodge an appeal to the Minister for Law.

80.3. **Recommendation G3:** The Law Society should continue to retain its existing power to intervene in a law practice, which should expand to include all law firm entities (whether local or foreign), and maintain its disciplinary jurisdiction over professional conduct matters.

[58] These suggested powers are based on the AG's existing powers of sanction over FLPs and other foreign entities. However, it is proposed that the proposed LSRA be empowered to impose financial penalties on entities found to be in breach of the rules, in accordance with the procedure in **Figure III**, instead of having to bring an action in court to seek an order for the imposition of a civil penalty.

[59] This proposal is based on the maximum civil penalty of S$100,000 which the AG can seek under the current LPA.

Figure III – Proposed Disciplinary Process for Entities



H. ABS: OWNERSHIP AND SCOPE OF PERMITTED SERVICES

81. At present, law practices in Singapore provide purely legal services and are solely managed and owned by lawyers.[60] The types of legal practice structure are limited to sole proprietorships, partnerships, LLCs and LLPs.

82. In Australia and the United Kingdom, various ABS models have been permitted. There are currently 220 ABS models registered with the SRA in England and Wales[61] and over 900 ABS models registered with the Law Society of New South Wales in New South Wales[62].

83. This has caused pressure on the local regulatory structure. ABS firms from Australia and the United Kingdom have sought to register in Singapore in similar form to their head offices. Thus far the practice has been to refuse their

[60] See for example, Rule 5 of the Legal Profession (Limited Liability Partnership) Rules 2006, Paragraph 2 of the Schedule of the Legal Profession (Law Corporation) Rules.
[61] As at December 2013. See http://www.sra.org.uk/solicitors/firm-based-authorisation/abs/abs-search.page.
[62] As at May 2013. See http://www.olsc.nsw.gov.au. ABS models in Australia can either be Multi-Disciplinary Partnerships, or ILPs (which can comprise traditional models such as LLCs which are fully lawyer-owned and providing solely legal services as well).

registration in such form. If they wish to register, they register as FLPs which are 100% lawyer-owned here, or businesses which do not provide legal services.

84. This pressure may also increase as SLPs look outward. They may also wish to tie up with FLPs which are ABS firms in their home jurisdiction.

85. There are three primary types of ABS models which have been introduced in Australia and the United Kingdom. In brief, they are the MDP, LDP and ILP:

85.1. The MDP is an entity which provides both legal and extra-legal professional services, i.e. it entails the practice of more than just the legal discipline, to provide synergetic and holistic solutions for clients. Examples of fields which benefit from the introduction of the MDP model are the restructuring and tax sectors, which benefit greatly from having integrated teams of accountants and lawyers working on the same projects. Variants of the MDP model can be found in Australia[63], the United Kingdom[64] and Germany[65].

85.2. The LDP is a practice which provides purely legal services but it differs from the traditional law firm in that it is not solely owned by lawyers i.e. it entails the practice only of law but allows co-ownership for members of staff who are non-lawyers[66] and / or the participation of external investment.[67] The LDP structure has been beneficial as it has allowed different types of legal professionals to group together (such as barristers and solicitors in the United Kingdom); and managers (e.g. IT, administration or finance) and other professionals (e.g. forensic accountants) within the practice to take share or ownership. The LDP was introduced in the United Kingdom in March 2009. As at July 2012, there were almost 500 LDPs in the United Kingdom.[68] Meanwhile, the United

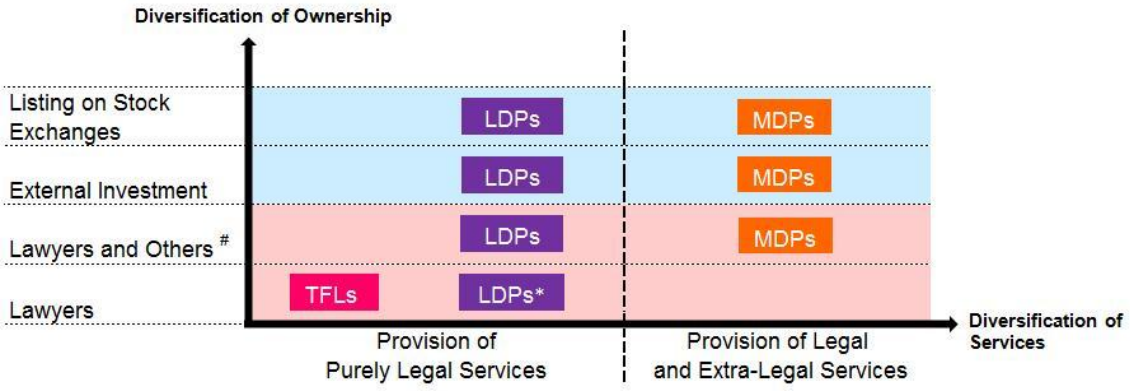
[63] In Australia, the MDP can take the form of a Multi-Disciplinary Partnership or an ILP. See paragraph 85.3 and section 136 of the LPA (NSW).
[64] The United Kingdom introduced MDPs in October 2011, as part of its plans for ABS.
[65] In Germany, three of the Big Four auditors (PriceWaterhouseCoopers, Ernst & Young and KPMG) have established MDPs offering multi-disciplinary services including audit, insurance, tax, consulting, advisory, corporate finance and legal. The last of the Big Four, Deloitte Touche Tohmatsu Limited, may well follow the first three to establish its own legal team in Germany; there was previously news that it was looking to acquire a 100-lawyer German national firm, Raupach & Wollert-Elmendorff, which has been part of Deloitte's network of partner law firms for many years.
[66] Since 31 October 2012, all LDPs under the old regime of the Administrative of Justice Act 1985 (which previously provided that LDPs can only have up to 25% of non-legal investors and managers and they had to be employees of the LDP) have since moved to the new regime, where all kinds of ABS are now allowed.
[67] Since October 2011, the United Kingdom now allows any kind of ABS. See also footnote 61 above. However, the United Kingdom continues to have a narrow definition of "LDP", limiting it only to non-lawyer employees of the firm, unlike this Report.
[68] See http://www.solicitorsjournal.com/hot-picks/legal-services-act/abs-countdown-could-abs-catch-outside-england-and-wales.

States appears to be moving towards embracing LDPs, while still ruling out external investors and other forms of ABS models.[69]

85.3. The ILP is an ABS model from Australia that straddles both the United Kingdom's ABS models of LDP and MDP i.e. it is a corporation which is either engaging solely in legal practice or engaging in both legal and other professional practices.[70] The ILP structure can either take on the structure of a private limited corporation or publicly listed corporation. The latter is an extremely liberal development of the traditional legal practice structures permitted around the world today, because it allows the ILP to raise funds in capital markets with broad *public* ownership. In Australia, two ILPs have gone on to be listed on Australia's Stock Exchange to attract external investors.[71]

86. In the case of all three ABS models, it would be possible to permit a split (1) between those who own the practice (the "Owners") and those who manage it (the "Managers"), and (2) according to the type of services provided. The diversification of services and the diversification of ownership produce a matrix of possibilities (see **Figure IV**):

Figure IV: Types of ABS Models



	Investment Ownership
	Internal Ownership
TLFs	Traditional Law Firms
LDPs	Legal Disciplinary Practices
LDPs*	Legal Disciplinary Practices, where barristers and solicitors work together
MDPs	Multi-Disciplinary Practices
#	Others can allude to managerial staff or professionals such as accountants or engineers

Note: Incorporated Legal Practices are not reflected in Figure IV because LDPs and MDPs can also be corporations.

[69] See http://www.legalfutures.co.uk/legal-services-act/alternative-business-structures/america-set-to-embrace-ldps-but-go-no-further-towards-abss.
[70] See the nature of an ILP in section 134 of the LPA NSW.
[71] Slater and Gordon and Integrated Legal Holdings were listed in 2007 and August 2008 respectively on the Australian Stock Exchange: Steve Mark and Tahlia Gordon, *Innovations in Regulations – Responding to a Changing Legal Services Market*, (2009) 22 Geo. J. Legal Ethics 501.

87. Notwithstanding the big leap taken by Australia and the United Kingdom, we need to be cautious in allowing similar ABS models to proliferate our legal landscape unless absolutely useful and with sufficient regulatory safeguards. For example, we would have to work out the conflicting regulatory frameworks amongst the regulators of the various professions in MDPs, or work out the lead regulator which should have oversight over MDPs, or impose percentage caps on non-SL ownership of LDPs and MDPs to gel with what we currently have as "minimum criteria" for SLPs in collaboration with FLPs. In relation to ILPs which proceed to listing, it would be almost impossible to regulate the individual non-SL owners who are members of the public.

88. In evaluating the usefulness of the MDP, LDP and ILP in Singapore's context, the following considerations should be taken into account:

88.1. ***Usefulness.*** There are several key advantages to ABS models which the global developments in this area[72] seek to harness:[73]

88.1.1. ***Capitalisation.*** These models contemplate that ownership may be distinct from those who provide services within the firm. Thus, investment funds or banks could, for example, own a share in a law firm entity. In the United Kingdom and New South Wales, they allow public listing. The broader access to capital allows these entities to grow faster.

88.1.2. ***Better management of law practices.*** ABS encourages the injection of partners or stakeholders who have deep management or finance experience.

88.1.3. ***Diversification of services.*** The possibility of MDPs opens up several new frontiers. From the perspective of the consumer, access to ABS models such as MDPs provides a "one-stop shop" i.e. single service providers which offer complementary services in key markets (e.g. initial public offerings, tax, restructuring). This would also enable practitioners within MDPs to look inward, rather than externally, for solutions to multidisciplinary issues and reduce their overheads and costs, whilst increasing their clientele base.

88.1.4. ***Market choice.*** The flexible structure of such ABS models provides a more diverse range of options, tailored to the needs of individual practices and consumers, which could encourage greater access to justice. For example, the United Kingdom Co-operative Group provides, *inter alia*, a combination of funeral services through its funeral branches and a bundle of legal related services such as probate and will-writing via its Co-operative

[72] Besides the United States, South Korea has also considered introducing ABS models: see *South Korea Moves to Loosen Regulations on Legal Trade*, The American Lawyer, 5 November 2009.
[73] These are the views prevalent in the United Kingdom – see Sir Clementi, *Review of the Regulatory Framework for Legal Services in England and Wales, Final Report*, December 2004, Chapter F.

Legal Services at affordable pricing catered to the public at large.[74]

88.2. ***Difficulties.*** ABS models pose difficulties in two main areas ultimately risking consumer protection:

88.2.1. ***Diversification of Ownership.*** Ownership of law firm entities by non-lawyer individuals could compromise legal professional ethics:

88.2.1.1. ***Competing Duties to the Court / Shareholder.*** Non-lawyer owners are not subject to legal professional and ethical rules and may bring about unreasonable commercial pressures to bear on lawyers, which might conflict with their legal professional duties. There is an even greater risk when passive external investors are permitted as well. The result could be a shift away from a lawyer's duty to the court, to duty to the shareholders.

88.2.1.2. ***Conflict of Interests.*** Non-lawyer owners may have conflicts of interest where they have a personal interest in the legal outcome of certain transactions taking place within the entity.

88.2.2. ***Diversification of Services.*** There is complexity in coordinating the regulation of different professional services being provided within certain ABS models such as MDPs, with possibly contradicting regulatory requirements:

88.2.2.1. ***Conflicting Regulatory Frameworks.*** The resultant ABS model may not look like a law firm if there are two or more professions represented in an MDP and none has a majority. The question arises as to which professional body should be the lead regulator. In addition, with the variety of non-law firm entities that law firms may collaborate with, there will be

[74] The Co-operative Legal Services ("CLS") is currently the largest ABS regulated by the SRA. It is part of the Co-operative Group ("Co-op Group"), which is the largest consumer co-operative in the United Kingdom. The CLS was set up to provide a trusted source of legal advice and help for members and customers of the Co-op Group and the general public alike. It is dedicated to widening and easing public access to legal services. CLS operates akin to any other law firm and adheres to the usual professional conduct and ethical rules e.g. the management of the Co-op Group cannot interfere with the specific advice rendered by a CLS solicitor to his client, etc. CLS focuses on the domestic legal consumer market. It obtains business whenever its members call in to seek legal advice for a particular matter e.g. motor car accident (i.e. through direct marketing) or through referral links within its group or external companies. CLS then follows up either through further conversation or sending a consultant for home visits to see whether the customer requires further legal assistance. If so, CLS will create a bundle package of legal services at a fixed price. This is one of CLS's selling points. It also helps increase the access to justice. In this regard, CLS engages in legal aid work and family law work. The Co-op Group's initiative to set up CLS presents a useful model for providing consumers with a cost effective and reliable source of legal services.

uncertainties at entity level regulation that the various professional bodies or regulatory authorities would have to iron out on a case-by-case basis.

88.2.2.2. ***Regulatory Reach.*** There is the issue of regulatory reach as to how the legal services regulatory authorities could exercise power over non-lawyers who are offering clients extra-legal services and who might have different codes of practices in areas such as client accounts and client handling.

88.2.2.3. ***Confidentiality.*** The feature of legal professional privilege is unique to the legal profession. Non-legal professionals may not be similarly covered and may well have different rules. The question arises as to the treatment of information relating to a transaction that has been handled by the different professionals within an MDP while ensuring that the various rules of the respective professions are not violated.

89. The Singapore legal services sector is highly international. Cross-border work accounts for much of its value add. While the Committee does not wish for Singapore to lead the global marketplace in this area, the Committee recognises that this is an issue on which a carefully deliberated and conscious decision needs to be made; otherwise, it may affect us adversely if we exclude foreign MDPs, LDPs or ILPs from our jurisdiction and find that our key competitor jurisdictions take a more liberal approach. At the same time: (i) we cannot allow foreign MDPs, LDPs or ILPs without allowing local versions of the same; (ii) nor can we allow foreign ILPs, LDPs or MDPs if we do not have in place a regime that is able to deal with professional and regulatory issues.

Recommendations

90. Taking into account the above, the Committee recommends as follows:

90.1. **Recommendation H1:** There is no pressing need for the Singapore market to take a "big bang" approach in the area of ABS. Singapore should not be a first mover in this area, and any shift should be made having close regard to developments in other jurisdictions, and done in a graduated way.

90.2. **Recommendation H2:** The Committee notes that unlike the LDP model, there has been little international movement towards embracing the MDP and ILP models. In this regard, the Committee thinks that a possible model for liberalisation could be the LDP model, subject to certain safeguards which the Committee feels are necessary in Singapore's context.

90.3. ***LDPs limited to non-lawyer employee participation.*** This LDP model should be permitted as it allows law practices the flexibility to attract and

retain non-lawyer employee talent necessary for the proper running, development and management of the law practice by offering them a stake in the firm. The Committee recommends that law practices wishing to structure as such must obtain prior approval from the proposed LSRA. Approval will be subject to:

90.3.1. Compliance with a maximum non-lawyer employee ownership cap of 25%;

90.3.2. For SLPs which enter into collaborations with FLPs, the FL cap of 1/3 of total equity share and non-lawyer employee ownership cap of 25% will continue to operate, subject to the total FL and non-lawyer ownership in the SLP being no more than 49%.

90.3.3. All non-lawyer employees who wish to own a stake in the LDP must as individuals, be approved by the LSRA as "Authorised Persons". Approval will be (1) subject to the employee fulfilling "suitability" and "fitness" tests, mirroring the current requirements for issuance of PCs to lawyers and (2) if further safeguards are deemed desirable, provision could be made for an inclusionary list of categories of persons which the LSRA could register, to prevent conflicts of interest and other abuses. If deemed necessary, a process allowing industry stakeholders such as the Law Society and the AGC to raise objections before such individuals are granted approval by the LSRA, can be built in, mirroring the PC application process.

90.3.4. Non-lawyer employees granted such approvals will be subject to the new PCR and such other conditions of approval as may be appropriate, and if found in breach, can be sanctioned or ordered to divest his / her interest in the LDP. He / she will have to seek fresh approval from the LSRA if there is a change in his / her stake or where there is a change to the job description.

90.3.5. The "Authorised Person" would be subject to the same professional standards and ethics rules as his / her lawyer counterparts in the LDP. If he / she breaches any of the professional standards and ethics rules, he / she would be subject to the same disciplinary process of his / her lawyer counterparts in the LDP as outlined in Recommendations B1 and C2. If he / she is found liable, the Court could make the following orders, namely impose a fine, impose a penalty or order the divestment of the individual's interest(s) in the LDP.

90.3.6. The LDP would be subject to the same business criteria as with other law firm entities operating in Singapore. If it is found to have breached the business criteria / licence conditions, liability should be as follows: The management of the LDP would be subject to the disciplinary process as outlined in Recommendations B1 and C2.

90.3.7. The LDP would be subject to the disciplinary process and sanctions as outlined in Recommendation G2.

90.4. ***LDPs involving external investment***. The Committee is of the view that MinLaw should study and consult the legal profession on extending the types of LDP arrangements that may be considered and on the related "suitability" and "fitness" tests. Preliminarily, the Committee also recommends the following safeguards:

90.4.1. Given that allowing external investment will open a law practice to the risk of being subject to the control of the external investor, thereby compromising the independence and quality of its services, an important factor that should be considered in assessing such LDPs is the viability of the firm's business plan and the availability of alternative funding sources.

90.4.2. As with LDPs with non-lawyer employee investors, an inclusionary list of acceptable categories of external investors could also be put in place.

90.4.3. To ensure regulatory robustness, the LSRA will also need to have the expertise to ensure that it is able to trace the true owner who wields control and influence within an LDP i.e. the individual who has ultimate ownership or beneficial interest in the entity, and ensure that such person is accountable and falls within the regulatory reach through conditions of the licenses both at the individual and entity levels.

90.5. ***MDPs.*** The Committee is concerned that there are real conflicting regulatory issues in the provision of mixed professional services that may change the fundamental notion of a law firm. For example, there is difficulty in reconciling the regulatory frameworks of multiple regulators and determining the lead regulator.

90.6. ***ILPs.*** The simplest form of the ILP model is already recognised in Singapore as the LLC. However, the Committee feels that we are not ready to go further and allow for listing or private equity of LLCs. To this end, the Committee finds it difficult to endorse the practice of law as an investable business.

90.7. **Recommendation H3:** FLPs with ABS structures in their home jurisdictions which wish to expand to Singapore would have to structure their Singapore office according to the permitted legal structures here.

SECTION 4 - CONCLUSION

91. Singapore's strategy to be an Asian hub for finance, business and other professional services requires a modern and progressive legal services sector, with a pro-business environment and a facilitative platform.

92. In coming up with the recommendations, the Committee took into consideration the need to modernise Singapore's regulatory framework for lawyers and law firm entities to meet the new challenges that have arisen.

93. At the same time, the Committee recognised the importance of ensuring a calibrated and measured pace for change, in light of the fact that some of the changes represented fundamental shifts from the status quo, which was premised on a very traditional platform.

94. Given the dynamic nature of the legal landscape, the Committee recommends that these changes, if accepted and implemented by the Government, should be reviewed and refined, as appropriate, in three years' time.

Members of the Committee, Sub-Committees and Secretariat

Committee

Chairperson:
Chief Justice Sundaresh Menon[75]

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Justice Chao Hick Tin	Vice President of the Court of Appeal
Dr Beh Swan Gin[76]	Permanent Secretary (Law)

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Justice Vinodh Coomaraswamy[78]	Judge, Supreme Court of Singapore
JC Lee Kim Shin[79]	Judicial Commissioner, Supreme Court of Singapore
Mr Wong Meng Meng SC[80]	Former President, The Law Society of Singapore
Mr Chua Eu Jin	Managing Director for Legal & Regulations, Temasek International (Private) Limited
Mr Kenneth Aboud	Managing Partner, Allen & Overy LLP
Mr Geraint Hughes	Managing Partner, Clifford Chance LLP
Mr John Savage	Partner, King & Spalding LLP
Mr Kevin Wong	Partner, Linklaters LLP
Mr Ben Giaretta	Partner, Ashurst LLP

[75] At the time of the establishment of the Committee, was Attorney-General. Appointed Chief Justice with effect from 6 November 2012.
[76] With effect from 1 July 2012, taking over from Mr Pang Kin Keong, currently Permanent Secretary (Transport).
[77] At the time of establishment of the Committee, was Judge, Supreme Court of Singapore. Appointed Attorney-General with effect from 25 June 2012.
[78] At the time of establishment of the Committee, was Partner, Shook Lin & Bok LLP. Appointed Judge with effect from 24 June 2013.
[79] At the time of establishment of the Committee, was Partner, Allen & Gledhill LLP. Appointed Judicial Commissioner with effect from 2 January 2014.
[80] At the time of establishment of the Committee, was President, Law Society of Singapore, up to 31 December 2012.

Sub-Committees

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Mr Kenneth Aboud	Managing Partner, Allen & Overy LLP
Mr Ben Giaretta	Partner, Ashurst LLP

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[82] At the time of establishment of the Committee, was Partner, Allen & Gledhill LLP. Appointed Judicial Commissioner with effect from 2 January 2014.
[83] At the time of establishment of the Committee, was Vice-President, Law Society of Singapore. Elected President with effect from 1 January 2013.
[84] At the time of establishment of the Committee, was Judge, Supreme Court of Singapore. Appointed Attorney-General on 25 June 2012.
[85] At the time of establishment of the Committee, was President, Law Society of Singapore, up to 31 December 2012.
[86] With effect from 1 July 2012, taking over from Mr Pang Kin Keong, currently Permanent Secretary (Transport).
[87] At the time of establishment of the Committee, was Partner, Shook Lin & Bok LLP. Appointed Judge with effect from 24 June 2013.

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Ms Ang Feng Qian[96]	Assistant Registrar, Supreme Court of Singapore
Ms Ruth Yeo[97]	Assistant Registrar, Supreme Court of Singapore

[88] Up to 10 December 2012.
[89] Up to 31 May 2013.
[90] From July 2012 to 7 November 2013.
[91] From July 2012 to June 2013.
[92] From 1 October 2012.
[93] Up to 1 September 2012.
[94] Up to 1 August 2013.
[95] From 17 September 2012.
[96] Up to 30 June 2013.
[97] Up to 31 December 2013.